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A
V I E W
OF THE
HARD-LABOUR BILL;

BEING AN
ABSTRACT OF A PAMPHLET,
INTITULED,
“ *Draught of a Bill, to punish by Im-
prisonment and Hard-Labour, certain
Offenders; and to establish proper Places
for their Reception.*”

INTERSPERSED WITH
O B S E R V A T I O N S
RELATIVE TO THE SUBJECT OF THE
ABOVE DRAUGHT IN PARTICULAR,
AND TO
PENAL JURISPRUDENCE IN GENERAL.

By JEREMY BENTHAM,
OF LINCOLN'S INN, ESQ.

L O N D O N :

Printed for T. PAYNE and Son, at the Mews-Gate;
T. CADELL, and P. ELMSLY, in the Strand;
and E. BROOKE, Bell-Yard, Temple-Bar.

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TABLE II. referred to in *A View of the Hard-Labour Bill*,

I.	II.	III.	IV.	V.	VI.	VII.	VIII.
No. of Districts.	Districts in each Circuit.	Place of Meeting in each District.	Counties in each District.	Justices for each County.	Convicts in a Year in each County.	Convicts to be provided for in each District.	Sums to be allotted to each County.[i]
I.	HOME CIRCUIT.	1st. Chelmsford	Essex	3	18	{ 90 }	
			Hertfordshire	3	12		
II.		2d. Maidstone	Kent	3	26	{ 99 }	
			Canterbury	1	1		
		Suffex	3	6			
III.	3d. Kingston	Surry		5	42	126	
IV.	MIDLAND CIRCUIT.	1st. Lincoln	Derbyshire	2	8	{ 90 }	
			Lincolnshire	[a] 3	10		
			Lincoln	1	1		
			Nottinghamshire	2	6		
			Nottingham	1	3		
			Rutlandshire	1	2		
V.		2d. Warwick	Leicetterhire	2	4	{ 108 }	
			Leicester	1	2		
			Northamptonshire	2	7		
			Warwickshire	2	18		
			Coventry	1	5		
VI.	NORFOLK CIRCUIT.	1st. Bedford	Bedfordshire	2	7	{ 75 }	
			Buckinghamshire	2	9		
			Cambridgeshire	2	4		
			Ely	1	2		
			Huntingdonshire	2	3		
VII.		2d. Norwich	Norfolk	3	15	{ 93 }	
			Norwich	1	2		
			Suffolk	3	14		
VIII.	NORTHERN CIRCUIT.	1st. Durham	Cumberland	2	5	{ [e] 51 }	
			Durham	2	6		
			Northumberland	2	[c] 5		
			Berwick	[b]			
			Newcastle	1	[d] 1		
			Westmoreland	1	1		
IX.		2d. Lancaster	Lancashire	5	26	78	
X.		3d. York	Yorkshire	[f] 6	30	{ 105 }	
			York	1	3		
			Kingston	1	2		

[a] viz. for each of its *Parts*, one.

[b] The Town of *Berwick* is specified in §. 5. p. 7. of the Bill, among the jurisdictions comprised within the Northern circuit: but no Committee-Justices are allowed to it in §. 6.

[c] The average number of convicts for *Berwick* is computed in the lump with the number for *Northumberland*.

[d] No number of convicts is stated for *Newcastle* in the Bill: in the Table annex'd to the Bill it is stated at *five*. This makes a difference of *fifteen* in the number to be provided for.

Sections 3. 5. 6. 9. and 11.

I.	II.	III.	IV.	V.	VI.	VII.	VIII.
No. of Districts.	Districts in each Circuit.	Place of Meeting in each District.	Counties in each District.	Justices for each County.	Convicts in a Year in each County.	Convicts to be provided for in each District.	Sums to be allotted to each County. [i]
XI.	OXFORD CIRCUIT.	1st. Oxford	Berkshire Oxfordshire	3 3	13 10	} 69 }	
XII.		2d. Gloucester	Glocestershire Gloucester Herefordshire Monmouthshire	2 1 2 2	22 3 8 8		
XIII.		3d. Worcester	Shropshire Staffordshire Litchfield Worcestershire Worcester	2 2 1 2 1	16 15 1 10 3	} 135 }	
XIV.		1st. Exeter	Cornwall Devonshire Exeter	3 3 1	12 22 1		
XV.		2d. Salisbury	Dorsetshire Poole Hampshire Southampton Wiltshire	2 1 2 1 2	10 1 19 1 14	} 135 }	
XVI.		3d. Wells	Somersetshire Bristol	4 2	25 17		
XVII.		London	London	5	107	321	
XVIII.		London, &c.	Middlesex	5	296	888	
XIX.	WELSH DISTRICT. [g]	Chester	Cheshire Welsh Counties } at large [b] Carmarthen [l]	3 12 1	16	} 48 }	
Total of the Convicts for all the Districts					955[k]	2865[k]	

[e] The number in the Table is 66. See note [d].

[f] viz. for each Riding, *two*.

[g] The County of the City of *Chester* is in §. 3. p. 5. of the Bill among the jurisdictions included in the computation of the number of convicts for the *Welsh* District: it is also specified in §. 5. p. 6. among the jurisdictions comprised within that District: but no Committee-Justices are allowed it by §. 6. The County of the Town of *Haverford-west* is in §. 3. p. 5. included in the computation of the average number of convicts for the *Welsh* District: but it is not specified in §. 5. p. 6. among the jurisdictions comprised within that District: nor are any Committee-Justices allowed to it in §. 6.

[h] viz. for each, *one*.

[i] Blanks are left for these in the Bill: a column is here allotted to them for the convenience of any one who may choose to fill up the blanks with a pen, when those in the Bill are filled up.

[k] But see note [d].

[l] *Carmarthen* is among the jurisdictions included, &c. (See note [g]): but no Committee-Justices are allowed it.



P R E F A C E.

WHEN the proposed Bill, of which the ensuing Sheets are designed to give a view, first fell into my hands, I was employed in finishing a work of some bulk, in which I have been treating the subject of *Punishment* more at large. In that work I should have come in course to speak of the particular species of Punishment which is the subject of this Bill. In that work, therefore, several of the observations would have come in course to be introduced, which I have here subjoined to several parts of the text I have been abstracting: and being there digested into a method, and forming a part of a system, to which I have been giving that degree of regularity which it has been in my power to give it, would probably have come with more force, and shewn

to more advantage, in company with the rest. On this account, had I been at liberty with respect to time, I should rather have wished to have published the whole together first, before I had detached from it these scattered fragments. The publication, however, of the proposed Bill in question, with the intelligence that accompanied it, effectually precluded any such option. To have delayed the publication of this part of my principal work till the Bill had been brought in and passed, would have been to delay it till that season had been over, in which, if in any, such parts of it as relate to the present subject, promised to be most useful.

When I had read Mr. Howard's Book on Prisons, one fruit of it was, a wish still more earnest than what I had been led to entertain from theory, to see some general plan of Punishment adopted, in which solitary Confinement might be combined with Labour. This capital improvement (for as such I cannot help regarding it) in penal legislation, I sat wishing, with scarce any mixture of hope, to see carried into execution: for some how or other the progress that had been already made in it near two
years

years ago in the House of Commons*, had escaped me. How great then was my pleasure and surprize at seeing a plan (which had already been pre-announced by the Judges in their circuits) originating, as appeared, from a high department in administration, and carrying with it every presumption of its being adopted; in which, not only almost all the excellent matter of the book I have been speaking of is engrafted, but many capital improvements super-added? This incident gave me fresh alacrity, and suggested fresh designs.

This Bill (or draught of a Bill, as it is called in the title, not having been as yet brought into Parliament) is accompanied with a Preface, short, indeed, but ample, masterly, and instructive. In this preface an instructive but general idea is given of the theoretic principles upon which the plan of the Bill is grounded; and a more ample and detailed account of the documents which furnished materials and reasons for the several provisions of detail. A history of the steps that have been taken in the formation and prosecution of the plan is also interwoven.

* See Preface to the Bill, p. 5.

Upon this it will naturally enough be asked, What was the occasion, and what can be the use of the ensuing sheets? why publish them? I answer—because the Bill itself is in fact *not* published*:—because, were it published, the contents of it are not quite so perspicuous as I imagined they might be made:—because I hoped to be a means, in some degree, of forwarding the good purposes of it, by stating to the public more in detail than it would have been competent either to the text, or to the preface to have done, the reasons on which the leading provisions in it seemed to be grounded, and by suggesting a few hints in the way of correction or addition.

“ Not perspicuous (I think I hear somebody exclaiming) what Act of Parliament was ever more so?” None, I must confess, that I can think of: but this affords me no reason for retracting. The Legislator, one would indeed naturally suppose, might (and

* I mean in the sense ordinarily put upon the word *published*. It is not sold at any of the shops. It has no bookfellers nor printers name. It seems to have been designed for the perusal, not of the world at large, but only of Members of Parliament, and of the Author's private friends.

P R E F A C E.

if he might, why should not he?) speak his own meaning so plainly, that no one could speak it plainer; so concisely, that no one could render his expression more concise: in such a method, both as to matter and form, that no one could cast it into a better. He might, one should think: for what should hinder him? Is he the less qualified for making himself understood and remembered by being a legislator? If he did, then, as he might do, expositions would be useless, and abridgements would be impracticable. But does he?—consult the twelve immense volumes of Acts of Parliaments: to which another is in the way to add itself every three years.

Let me not all this while be understood to reflect censure on a great master of language, on whom nothing less than censure is intended. Had custom (that is the law of Parliament) left him at liberty to follow the dictates of his own intelligence, little or nothing, I suppose, would have been left to any one else to add to it on the score of perspicuity: if (supposing the Bill and the Preface to come, as they purport to do, from the same hand) it be reasonable to judge what he *could* have done from what he *has*

done. On this head I have scarce an idea of making any greater improvement on his draught than what he could have made, if he had pleased, and would, if he had thought proper. He thought, I suppose (if it occurred to him to propose the subject to his thoughts) that one plan of reformation was enough to proceed upon at once. On the present occasion his business was to reform a part of the system of punishment adopted by our legislation: not to go about reforming the legislative stile. He has therefore, of course, conformed, in a great measure, to the stile in use, though with a considerable defalcation from the usual complement of tautologies and redundancies: his publication being a draught of the very instrument which it is intended should pass into an act.

The present abstract of it having no pretensions to be considered in that light, I have held myself at liberty to afford the reader many of those assistances which parliamentary men, in all their authoritative publications, seem so studious to reject.—I have therefore prefixed numbers to the Sections: I have given them marginal contents: I have made frequent breaks in the letter-press;

prefs : I have numbered, every now and then, the leading articles, which, though included together in one Section, seemed to claim each of them a separate measure of attention; and, by allotting to each a separate line, have displayed them more distinctly than if lumped together in one unbroken mass. These, and other such typographical assistances, are no more than what it is common enough for writers, on the most ordinary subjects, to give their readers: nor would they be looked upon as singular, or indeed worth mentioning, but with respect to those intricate and important discourses which stand most in need of them.

Another, and rather more serious task has been to break down the long sentences, into which this composition (being intended to be passed into an Act of Parliament) could not but have been cast, into a multitude of shorter ones: to retrench the tautologies and superfluities with which this composition, though remarkably scanty on this head (being intended for an Act of Parliament) could not but abound. In the course of these operations, I have here and there ventured to make some little alteration in the order of the several matters contained in the

same Section: but with entire Sections I have no where taken the like liberty.

This abstract then (to mention a more general use that may be made of it) will of itself be sufficient to prove, that a sentence of any given length is capable of being cast into as many sentences, and, consequently, that each sentence is capable of being made as short, as there can be occasion to desire. It is therefore of itself sufficient to divest the long-windedness of our *legislative* (one may say in general of our *legal*) style, of the plea of necessity, the only one which a man could think of urging in its favour. Had this been even my principal object, I should of all others wished for a Bill like this to work upon, for the same reason that grammarians take the works of Pope, and Swift, and Addison, for examples of solecisms in grammar*.

But to return. By the means above-mentioned I will venture to hope, and that without any pretensions to make it a ground of vanity, that this abstract may be found to read somewhat more pleasantly than even the Bill itself: and that on this head the reader,

* See Bishop Lowth's Grammar, *passim*.

who means only to take a general view of the Bill, and who is not in that line of duty or of study which would lead him to weigh words and syllables, may, as far as he thinks he can depend upon the fidelity of this copy, find it answer his purpose as well as the original.

I am sorry I cannot give equal satisfaction to his curiosity with respect to the Preface ; in which the elegance of a style, which is the Author's own, has been at full liberty to display itself, unfettered by technical forms and prejudices. This I must not transcribe, nor can presume to imitate. The uncouth piles of parliamentary composition have not often been graced with such a frontispiece.

Amongst other things we learn by it, is, that " the difficulties which towards the end " of the year 1775 attended the transportation of convicts *," gave great weight to the inducements, if they were not themselves the sole inducement, that led to the institution of this plan. It may be some consolation to us, under the misfortunes from which those difficulties took their rise, if they should have forced us into the adoption of

* Page 1.

a plan that promises to operate one of the most signal improvements that have ever yet been made in our criminal legislation. It may not even be altogether extravagant to suppose, that at the end we may be found to have profited not much less than we shall have suffered by these misfortunes, when the benefits of this improvement come to be taken into the account. For let it be of ever so much consequence that trade should flourish, and that our property should go on *encreasing*, it seems to be of not much less consequence that our persons should be safe, and that the property we *have* should be secure. If then the efforts of our statesmen, to save the nation from the stroke of those adversities have not been attended with the success they merited, let them not make it an excuse to themselves for sinking into despondency. Let them rather turn their activity into a new channel: let them try what amends can be made, in some other line, to their own reputation, and to the public service: let them look at home; and if, after all that can be done, the nation must lose something in point of external splendour, let them try what they can gain for it in point of domestic peace.

I un-

I understand that the plan is not yet looked upon as absolutely compleated, which may be one reason why the circulation of it has been hitherto confined to a few hands. The ample use, however, and liberal acknowledgement that has been made of the helps afforded by former volunteers, induced me to hope, that any lights that could be thrown upon the subject, from any quarter, would not be ill received.

Whatever farther additions or alterations the proposed Bill may come to receive before it has been carried through the House, there seems to be no great likelihood of their bearing any very great proportion, in point of bulk, to the main body of the Bill as it stands at present. And as it is not yet clear but that it may be carried through in the course of this Session in its present state, it seemed hardly worth while to delay this publication in expectation of further materials that may either never come, or not in such quantity as to make amends for the delay. It will be an easy matter, if there should be occasion, to give a supplemental account of such new matter as may arise.

arise. The attention of the country gentlemen has already been drawn to the subject by the general accounts given of the plan by several of the Judges on their circuits: and it should seem that no farther apology need be made for giving as much satisfaction as can be given in the present stage of the business, to the curiosity which a measure, so generally interesting, can scarce fail to have excited. That curiosity is likely to be farther raised by some fresh enquiries, which I understand it is proposed to institute in the House of Commons: and as the result of these enquiries comes to transpire, the use and application of it will be the better seen, by having so much of the plan, as is sketched out already, to refer to.

The haste with which, on the above accounts, it was thought necessary to send the ensuing sheets to the press, must be my apology for some inaccuracies which, I fear, will be discoverable in them, as well in point of method as of matter. It is not a month since the proposed Bill first fell into my hands in the midst of other indispensable avocations.

The use of them, however, if they have any, will, I hope, not be altogether confined

fin'd to the short period between the publication of them, and the passing of the Bill into a law. For when a great measure of legislation is established, though it be too firmly established to be in danger of being overturned, it is of use, for the satisfaction of the people, that the reasons by which it is or may be justified, be spread abroad among them.

Lincoln's-Inn,
March 28, 1778.



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ADVERTISEMENT.

“ Con-
“ victs”
put for
“ Offen-
“ ders,”

THE persons who are stiled “ *convicts*” in the ensuing abstract, are stiled “ *offenders*” in the proposed Bill. I gave them the former name, to avoid a confusion I found occur in speaking of them, at times when there was occasion to speak of such fresh offences as may come to be committed by the same persons during their confinement, or of certain other offences which the Bill has occasion to prohibit in other persons.

Sex.

In regard to *sex*, I make, in general, no separate mention of the *female*; that being understood (unless where the contrary is specified) to be included under the expression used to denote the *male*.

A VIEW

A
V I E W
OF THE
HARD-LABOUR BILL.

THIS Bill has two capital objects: General
view of
the Bill.
1st, To provide a new establishment
of Labour-houses all over England.
2dly, To extend and perpetuate the establish-
ment already set on foot, for the confinement
of convicts, to labour upon rivers. It con-
sists of sixty-eight Sections. The fifty-two
first are employed upon the former of the
above objects: the seven following upon the
latter: and the remaining nine upon certain
customary provisions of procedure and a few
other matters that apply alike to both.

First with regard to the establishment of
Houses of Hard Labour.—The first twenty
Sections are employed in making provision

B

for

A View of the Hard-Labour Bill.

for the erection of the buildings, and for the appointment of the magistrates and other officers to whom the management of that business is committed. The remaining thirty-two Sections are employed chiefly in prescribing the regimen to be observed in them when built.

So much for the general out-line of this regular and well-digested plan. Let us now take a view of the Sections one by one.

Sect. I.
P. 1.
Preamble
—reasons
for the
bill.

The first Section, or Preamble, states the general considerations which determined the author to propose the establishments in question. These considerations are the insufficiency of transportation for the purposes of example and reformation, the superior efficacy of a course of confinement and hard labour, and the unfitness of the present Houses of Correction for that purpose.

O B S E R V A T I O N S.

Disad-
vantages
of *Trans-*
portation
in com-
parison
with
Hard La-
bour.

Here would naturally be the occasion for a commentator to dilate more particularly than it would have been in character for the bill itself to have done, upon the inconveniences of the old punishment of transportation, which it meant to supersede, and the advantages of the new mode of punishment, which it is the object of it to introduce. This I shall have occasion to do at large hereafter; stating in course the advantages and disadvantages of

of each : but a slight and immethodical sketch is as much as the present design gives room for.

Sect. I.
p. 1.

The punishment of transportation, in its ordinary consequences, included *servitude* ; the punishment here proposed to be substituted in the room of it. At all events, it included *banishment*. These two it comprehended professedly and with design ; besides an uncertain, but at any rate, a very afflictive train of preliminary hardships, of which no account was taken ; amongst others, a great chance of producing death.

Taking it all together, it had a multitude of bad properties ; and it had no good ones, but what it derived from servitude, or are to be found in the latter punishment in a superior degree.

1. In point of proportion it was *unequal* : for a man who had money might buy off the servitude *. With regard to the banishment, it was again unequal ; for nothing can be more unequal than the effect which the change of country has upon men of different habits, attachments, talents, and propensities. Some would have been glad to go by choice ; others would sooner die.

2. It was *unexemplary* : what the convicts suffer-

* In virtue of the Statute 4 G. 1. c. 11. the Court used to contract with some person to convey the convict to the place of destination : thereupon the convict is made over " to the use of " the contractor and " his assigns," who are declared in general terms to " have " a property or interest in " his " service," for the time specified in the sentence.

Sect. I.
P. 1.

ed, were it much or little, was unknown to the people for whose benefit it was designed. It may be proved by arithmetic, that the purpose of *example* is, of all the purposes of punishment, the chief.

3. It was *unfrugal* : it occasioned a great waste of lives in the mode, and a great waste of money in the expences, of conveyance.

4. It did answer indeed, in some degree, the purpose of *disabling* the offender from doing further mischief to the community during the continuance of it ; but not in so great a degree as the confinement incident to servitude. It has always been easier for a man to return from transportation, than to escape from prison.

5. It answered, indeed, every now and then, the purpose of *reformation* : But by what means ? By means of the servitude that was a part of it. It answered this purpose pretty well ; but not so well upon the whole, under the uncertain and variable direction of a private master, whose object was his own profit, as it may be expected to answer under regulations concerted by the united wisdom of the nation, with this express view.

Sect. II.
P. 2.
Labour-
Houses
to be
erected
through-
out Eng-
land and
Wales.

Section II. provides in general terms for the erection of Houses for the purposes of confinement and labour throughout England and Wales. These houses are to be entirely separate from all other public habitations, whether destined for the custody or punishment

ment of offenders, or for the maintenance of the honest poor. The legal appellation they are directed to be called by, is that of *Houses of Hard Labour*.

Sect. II.
P. 2.

OBSERVATIONS.

It might, perhaps, be as well to call them *Hard-labour Houses*, or *Labour-houses*, at once. This, or some other equally compendious, is the name that will undoubtedly be given them by the people at large : the tendency of popular speech being to save words and shorten names as much as possible. Such a name should be analogous to the names *Rasp-huys* [Rasping-house] and *Spin-huys* [Spinning-house] in use in Holland ; and in short, to our English word *Work-house*. The technical name would by this means be the same as the popular. This would, *pro tanto*, save circumlocution, and guard against error in law proceedings. Where departing from the popular forms of speech is not necessary, it is always inconvenient. So much for an object, which, perhaps, may be thought to be hardly worth the words that have been spent upon it.

Section III. is designed to make provision for the raising of the monies to defray the charges of purchasing ground, and building : and it prescribes the proportions in which such monies, when raised, are to be distributed among the districts established in the

Sect. III.
P. 2.
Supplies
for building how to be levied and distributed.

Sect. III. next section for the purposes of the Act.*
 P. 2. These proportions it takes from the number of convicts that have been ordered for transportation, in each county, within the compass of a year, upon an average taken for seven years last past. A blank is left for the particular fund out of which the monies are to issue,

OBSERVATIONS.

The contribution by which these monies are to be raised, is made, we see, not a local but a general one. A local tax, however, is that which seemed most obviously to suggest itself, since the expenditure is local: but a general one appears to be much preferable. Had the tax been local, it would have been raised upon the plan of the county taxes: it would by that means have fallen exclusively upon householders bearing scot and lot. But the benefit of it, be it what it may, is shared indiscriminately among the whole body of the people. Add to this, that the sums of money requisite for this purpose will probably be large. These, were they to be raised at once in the several districts in the manner of a county tax, would be apt to startle the inhabitants, and prejudice them against the measure.

As to the proportion in which the supplies are to

* See Table II. Col. 8.

be distributed among the several districts, this is taken, we see, from the average number of convicts. Sect. III.
P. 2.
This was an ingenious way of coming at the extent it would be requisite to give to the respective buildings, and the terms allotted would naturally be proportioned to the extent. Rigid accuracy in this apportionment, does not seem, however, to have been aimed at. According to the method taken, the allowance to the smaller counties, will be somewhat greater in proportion than to the larger. There are a great many counties whose average number is settled at *one*: the computation does not descend to fractions. This, if it be an error, is an error on the right side.

For two of the towns that are counties of themselves, no average number of convicts, I observe, is stated: these are, *Newcastle upon Tyne* and *Haverfordwest*.

Upon turning to the table subjoined to the bill, it appears, that at *Haverfordwest*, there have been no convicts at all within the time in question. At *Newcastle upon Tyne* the average is stated at five. The omission in the bill seems therefore to be accidental.

Section IV. provides for the payment and application of the monies mentioned in the preceding Section. They are directed to be paid to committees of Justices, * or their order, and applied to the building of the Sect. IV.
P. 6.
—and applied.

* See Sect. VI.

Sect. IV. Houses above-mentioned. The deficiencies,
 p. 6. if any, in the provision thus made, are to be borne afterwards by the districts.

Sect. V. By Section V. all England, including
 p. 6. Wales, is cast, for the purposes of this Act,
 Counties to be consolidated into districts. into districts of a new dimension*. This division is made commensurate to the division into circuits, as well as to that into counties. A certain number of these districts are included in each circuit: and each district includes one or more counties. Towns, that are counties of themselves, are put upon a footing in this respect with counties at large. London and Middlesex form each a district by itself. The whole principality of Wales, together with Cheshire and Chester, are included in one district. The whole number of districts is nineteen. The reason it gives for this junction of the counties is, that it will serve to lessen the expence.

OBSERVATIONS.

The circuit divisions, it seems, were thought too large; the county divisions too small; besides that, the latter are unequal. This is the case more particularly with the towns that are counties of them-

* See Table II. Col. 2. and 4.

selves, in comparison with some of the larger shires. The use of making the districts less than the circuits, and at the same time larger than the counties, is the adjusting the buildings to a convenient size. An establishment for the reception of a large number of persons may be conducted, as the preambular part intimates, at a proportionably less expence than an establishment for the reception of a small number. The uses of making them less than the circuits, are two: 1st, the lessening the expences of conveying the convicts from the place of trial to the place of punishment: 2dly, the lessening the trouble and expence of the Justices, who are to travel out of their own counties to the town where they are to meet to carry the act into execution. It is doubtless on the former principle that we are to account for the comprizing the twelve Welsh counties together with Cheshire and the city of Chester, in one district; for in this district, extensive as it is, the average number of convicts has been found to be less than in any other. On the two latter principles, it may seem rather inconvenient that this district should be so large. It is to be hoped, on this account, that the situation chosen for the labour-house for this district, will be as central as is consistent in other respects with convenience.

Sect. V.
p. 6.

Section VI. establishes the Committees of Justices who are to be appointed by the General Sessions of their respective counties, to meet together for the purposes of carrying

Sect. VI.
p. 7.
Committees of
Justices
to be appointed

for each
district by
the Ses-
sion.

ing this Act into execution at a particular place within each of the districts, within which their respective counties are included*: and it settles the proportion which the number of Committee-men in each county is to bear to the number of Committee-men in every other. These Committees are empowered to appoint stated meetings (giving ten days notice) and to make adjournments. The Committee-men are to be appointed at the next General Sessions after the passing of this Act.

OBSERVATIONS.

The power of sending Justices as Committee-men, is given, we may observe, to all the counties at large, in various proportions, from one to five inclusive; likewise to all the town-counties except three; *Berwick, Chester, and Haverfordwest*. Whether these omissions are accidental or designed, is more than I can take upon me to conjecture.

Sect. VII.
p. 8.
—or else
by the
Custos Ro-
zmarum.

Section VII. provides against any failure in the sessions to appoint Committee-men, or in the Committee-men to take upon them their office. If at the next General Sessions

* See Table II. Col. 5. and 3.

after

after the passing of the Act no Committee-men should be appointed, or not enough, or if any should refuse, power is given to the *Custos Rotulorum* to supply the deficiency within three months.

Sect. VII.
p. 8.

OBSERVATIONS.

This provision seems to proceed on the supposition, that in some places the measure of the bill may prove unpopular among the country magistrates. By way of a spur to them, this power is therefore given to the *Custos Rotulorum*: but may it not be possible, especially in some of the remote counties (suppose the Welsh counties) that even the *Custos Rotulorum* may be tainted with the local prejudices? It should seem there could be no harm, rather than there should be a gap in the execution of the Act, in substituting the *Lord Chancellor* to the *Custos Rotulorum*, in the same manner as he is substituted to the Sessions.

Section VIII. gives the Sessions the power of changing their Committee-men from year to year: also of supplying vacancies at any time when they may happen.

Sect.
VIII.
p. 9.
—how to
be sup-
plied or
changed.

OBSERVATIONS.

For conformity's sake, might not this latter power, in default of the Sessions, be given to the *Custos Rotulorum*? and (if such an addition were to be adopted) in his default, to the *Lord Chancellor*?

Section

Sect. IX. Section IX. requires the Committees to
 P. 9. appoint each a *clerk* and *treasurer*, with such
 Appoint- salaries as they shall think reasonable, re-
 ment of movable at pleasure: the treasurer to give
clerks security in proportion to the sum likely to
 and *trea-* come into his hands *.

Sect. X. Section X. appropriates the monies to be
 P. 10. received by the Committees, or their trea-
 Supplies surer, to the uses of the act.
 appropri-
 ated.

Sect. XI. Section XI. appoints the place and time
 P. 11. of the first meeting of the several Com-
 Commit- mittees†; empowering them (after chusing
 tees, their chairman, clerks, and treasurer) to ad-
when and *where* to be held. journ to any other time and place within the
 be held. same district. It then directs them, at this or
 any subsequent meeting, to make choice of a
 piece or pieces of ground to build on, one
 or more for each district. The orders for
 this purpose are to be certified in London
 and Middlesex to the King's-bench, and
 elsewhere to the Judges on their circuits; ex-
 cept that, in the Welch district, they are to
 be certified, not to any of the Welch Judges,
 but to those of Chester: in case of their dis-
 approval, a second order is to be made, and

* See Table II. Col. 8. † See Table II. Col. 3.

so *toties quoties* : so, also if the spot pitched upon be such as cannot be purchased under the powers given by the act*. With regard to the choice of the spot it gives some directions. The Committees are required to have regard to

Sect. XI.
P. 11.

1. The healthiness of the situation.
2. The facility of getting water.
3. The *nearness* to some trading town.
4. But to avoid choosing any place *within* a town, if any other convenient place can be found.
5. To give the preference to a place surrounded with water, if in other respects healthy and proper.

OBSERVATIONS.

With regard to the places of meeting it seems rather extraordinary, that in the *Welsh* district, a place so far from central as *Chester*, should be appointed. This obliges the whole body of Committee-men from *Wales* to travel out of their principality ; and a *Pembrokeshire* Justice, who has to traverse all *North* and *South Wales*, may have, perhaps, near two hundred miles to go before he reaches the place of his destination. This inconvenience, indeed, is open, in some measure, to a

* See Sect. XVII. and XX.

remedy,

Sect. XI. remedy, by the power given to the Committees to
 P. 11. choose the place of their adjournment ; but at any rate, be the place ever so central, in so large a district it cannot but be very remote from the abodes of the greater part of the Committee men. On this account, more especially if the *Welsh* district is to remain undivided, might it not be proper to allow to the Committee-men, at least to such as had to travel out of their own counties, a small sum, (were it no more than ten shillings a day,) to help indemnify them for their expences ? To many a magistrate, who might, in other respects, be better qualified for the business than a richer man, the expence (to say nothing of the trouble) of making frequent journies to such a distance as he might have occasion to travel to, might be an objection sufficient to prevent his acceptance of the office. There seems, at any rate, to be much more reason for giving a salary to these Committee-men, than to persons to be appointed Visitors to the labour-houses * ; since the visitors *may* be taken from the neighbourhood of the house, and the committee-men *must*, many of them, come from a great distance. Suppose the allowance were to be sixpence a mile (the distance to be ascertained by the oath of the traveller) and a sum not exceeding ten shillings a day, so long as the Committee continues sitting ?

The directions respecting the choice of the spot are well imagined, and strongly mark the judg-

* See Sect. XXII.

ment and attention of the author. His ideas on this matter seem to quadrate pretty exactly with “the “singular and well-directed researches” (as he files them) of Mr. Howard, to whose merits, as a zealous and intelligent friend of human kind, it is difficult for language to do justice.

Sect. XI.
P. 11.

One direction is, that a preference be given to a spot surrounded with water, if it be in other respects healthy and proper. Unless the water be *running* water, it is not very likely to be healthy.

Section XII. appoints a nominal proprietor, to whom the ground, when purchased, is to be conveyed. This person is to be the town-clerk, for London; the clerk of the peace, for Middlesex; the clerk of assize of the circuit, for the other English districts; with a blank left for the Welch; and for this purpose the officers in question are respectively constituted bodies corporate.

Sect. XII.
P. 11.
Ground
to whom
to be *con-
veyed.*

OBSERVATIONS.

After such a provision, might it not be necessary, or would it be superfluous, to provide that any action might be brought by the Committee in the name of any of the officers therein named, without naming the person who holds the office? This is a precaution taken in some Acts. The occasion, if any, which may make it necessary, is that of a vacancy happening in any of those offices,

Sect. XII. fices, at a time when it is requisite to bring (sup-
 P. 11. pose) an action of trespass, for any encroachment
 or other trespass committed upon the spot thus
 to be made the property of the public. The tres-
 pass is committed (suppose) at a juncture that
 does but just admit of an action's being brought
 in such time as to be tried at the next assizes. The
 county is one of those in which the assizes are held
 but once a year. To obviate this difficulty, if
 there be one, why might not the Committee be im-
 powered to bring any such action in their own
 name? in short, why might not the Committee
 themselves be the body corporate? This would
 save circuitry; since whatever is done by the officer
 above mentioned, must be by their direction, and
 under their controul.

Sect.
 XIII.
 p. 12.
*Dimen-
 sions of
 the build-
 ings—ac-
 commodat-
 ions.*

Section XIII. gives a proportion for de-
 termining the size of the several houses. They
 are to be large enough to contain *three* times
 the average number of convicts in a year, it
 being supposed that each convict will con-
 tinue in them three years upon an average.

It likewise gives some directions with re-
 spect to the apartments. Each house, with
 its appurtenances, is to contain

1. Lodging-rooms for the convicts.
2. Storehouses and warehouses.
3. An infirmary, with a yard adjoining.
4. Several cells or dungeons.
5. A chapel.

6. A burying-ground.

7. Apartments for the officers.

Sect.
XIII.
p. 12.

OBSERVATIONS.

To the above accommodations, it might, perhaps, be not amiss to add a *garden*, to supply the house with vegetables. The laborious part of the work might be done by the prisoners themselves, who might be employed in it, either some few of them for a constancy, or all of them occasionally. In the later case, the privilege of being thus employed might constitute an indulgence to be given in the way of reward, as it would be an agreeable relief from their ordinary domestic labour *. It seems probable, that a part of the labour might be more oeconomically employed in this way than upon the ordinary business of the house; even though the prime cost of a wall to inclose the garden were taken into the account.

With regard to the “cells or dungeons,” as they are called, there are some cautions that seem highly necessary to be observed. That, for the punishment of the refractory, there should, in every such house, be some places of confinement, under the *name* of dungeons, seems perfectly expedient: at the same time that it is altogether inexpedient there should any where be any place that

* Mr. Campbell, Superintendent of the Thames convicts, employs a part of the ground he has the management of in raising vegetables for their use.

Sect.
XIII.
p. 12.

should partake in all respects of the *nature* of those pestiferous abodes.

The purposes for which dungeons seem in general to have been calculated (I mean, such purposes as are justifiable) are two; *safe custody*, and *terror*. The first must, in all cases, and the second may, in many cases, be desirable. But in aiming at these two purposes, another highly mischievous effect has unintentionally been produced; the exclusion of fresh air, and, as one consequence of it, the exposure of the room to perpetual damps. These apartments have been contrived underground; hence there have been no lateral outlets; but the entrance has been at top through a trap-door. By this means the air has remained almost continually unchanged: being breathed over and over again, it has soon become highly unfit for respiration: and having in a short time dissolved as much of the damp as it could take up, the remainder has continued floating without any thing to carry it off. The pernicious consequences of such a stagnation, in generating the most fatal and pestilential diseases, have been inferred from theory*, and have been but too fully verified by experience and observation †.

The business is then to make the necessary pro-

* See, with respect to the effects of air tainted with respiration, Priestly on Air, Vol. 1st and 2d. With respect to damps, Fordyce's Elements of the Practice of Physic, title *Catarrh*, and Hamilton's Essays.

† See Howard on Prisons, *passim*.

visions for the purposes of safe custody and terror, without excluding the fresh air. To effect the first of these purposes, other means in abundance are afforded upon the face of the bill, as it stands at present (and if these be not sufficient, more might be afforded) by the structure and regimen of the prison. Some expedients relative to this design will be suggested in the course of these observations.

Sect.
XIII.
p. 12.

With regard to *terror*, the chief circumstance by which a dungeon is calculated to answer this purpose, is the exclusion of day-light. In a dungeon this effect is produced by a constant and unalterable cause—the subterraneous situation of the place: but the same effect may be produced more commodiously, by means which might be applied or not, according as they were wanted; and that without excluding the fresh air. The means I am speaking of are very simple. Air travels in all directions; light only in right lines. The light therefore may be excluded without the air, by adapting to the window a black scuttle inflected to a right angle. If the door be made on the side opposite to the window, there will be as much draught as if the window opened directly into the air, without the scuttle. Light might also be prevented from coming in at the door, by a return made to it in the same manner. By these means the prisoner's ordinary apartment, or any other apartment, may be made as gloomy as can be desired without being unhealthful.

I do not deny, but that the terrors of a dun-

Sect.
XIII.
P. 12.

geon may depend in some degree upon the circumstance of its being underground. In the imaginations of the bulk of men, the circumstance of *descent* towards the center of the earth is strongly connected with the idea of the scene of punishment in a future life. They depend in some measure likewise upon the circumstance of *stillness*; and the stillness may at the same distance from a founding body be made more perfect in a dungeon than in an ordinary room: the uninterrupted continuity of the walls, at the same time that it excludes fresh air and day-light, serving also to exclude sound. But I cannot look upon the first of these circumstances of terror as being of that importance, as to warrant the paying so dearly for it, as must be paid by the exclusion of wholesome air, which is so apt to change a punishment, meant to be slight and temporary, into a capital one. As to the purpose of stillness, it might be answered in a nearly equal degree, by building cells (which, at any rate, should be *called* dungeons) at a distance from the house. If the utmost degree of stillness were thought not to be absolutely necessary to be insisted on, a man's own lodging-room might at any time, by the contrivance above mentioned, be fitted up for the purpose. On another account, however, the lodging-rooms are not quite so answerable to the design, as a place on purpose, since something of the effect depends upon the *strangeness* of the place; and upon its being known to be appropriated to a penal purpose.

After

After all, it does not seem adviseable to rest the whole of the punishment altogether upon the ground of terror; since terror is obliterated by familiarity. To make up a uniform complement of punishment, it is found necessary to have recourse to other circumstances of distress; such as the hard diet appointed by this bill. This consideration makes it the less necessary to be at any inconvenient expence in screwing the sentiment of terror up to the highest pitch.

Sect.
XIII.
p. 12.

Section XIV. directs, that as soon as a spot of ground shall have been purchased, advertisements shall be inserted by the Committees in the local news-papers, for builders to give in plans, with proposals and estimates; that a plan, when agreed upon by the Committee, shall be presented to the Judges as before; * and that after their approbation, signified in writing, the Committee may contract with the architect, and superintend the execution.

Sect.
XIV.
p. 12.
Power to
contract
with
builders.

Sections XV. XVI. XVII. XVIII. and XIX. are taken up with a set of regulations, which, though very necessary, are collateral to the main purposes of the Act, being employed in giving the usual system of powers

Contents
of Sec-
tions from
XV. to
XIX.

* See Sect. 11.

requisite to effectuate purchases to be made for public purposes. With regard to these, it will be sufficient to give a very general sketch of the contents.

Sect. XV.

p. 13.
Disabilities to alien removed.

Section XV. removes the disabilities that proprietors of certain descriptions lie under to alien.

Sect.

XVI.

p. 13.
Purchase monies applied.

Section XVI. provides for the distribution of the purchase-money among the parties interested.

Sect.

XVII.

p. 14.
Proprietors compelled.

Section XVII. prescribes the usual course for bringing unwilling proprietors to compliance.

Sect.

XVIII.

p. 15.
Price to be settled by a jury.

Section XVIII. gives the usual powers for settling disputes concerning the value of the spot, by the verdict of a jury.

OBSERVATIONS.

In settling the fine to be imposed on witnesses in case of contumacy, it limits it, on the side of diminution, to twenty shillings, and on the side of encrease to ten pounds. This provision seems liable to an inconvenience to which fines imposed by statute are very apt to be liable, that of the *punishment's* proving, in many instances, *less than equivalent to the profit of the offence*. A witness, we shall say,

Sect.
XVIII.
P. 15.

say, knows of a circumstance, not notorious in its nature, that tends to diminish the value of the land : or, let the circumstance be notorious, one witness alone is summoned, his design of failing not being suspected. The value in question being the value of the fee simple, it will be somewhat extraordinary, if the difference made by such a circumstance, be not more than ten pounds. In such case, the owner, indemnifying the witness, is *sure* of gaining more than ten pounds, with only a *chance* of losing a sum between ten pounds and twenty shillings. A case might be figured, though not so natural an one, in which either the witness or one of the parties might have an inducement to suppress a circumstance that tended to *increase* the value of the lands.

On the other side, the danger is greater but the inconvenience less. The public does not suffer so much by a charge affecting the public purse, as an individual by a loss affecting his purse to the same amount.

Would there be any improper hardship in obliging the party in this case (as he is in so many more cases of greater inconvenience to him) to be examined upon oath ?

If proper evidence cannot be got at one time, it ought to be got at another. The trial therefore should be adjourned, or rather, to prevent private applications to the jurymen, a new trial should be appointed. Power should be given in such case to compel the appearance of the contumacious witness by arrest ; and if at last he appears and is

Sect.
XVIII.
P 15.

examined, the natural punishment for his offence would be the being subjected to the costs of the preceding trial; since, if any part of the charge were not borne by him by whose delinquency it was occasioned, it must fall upon somebody who was innocent. This punishment, however, ought to be open to mitigation in consideration of his circumstances; since a charge to this amount, though it might be a trifle to one man, might be ruin to another.

In order, however, to ground a warrant for the apprehension of a witness who, on a former trial, had made default, an averment upon oath should be exacted, from the party on whose behalf the warrant is applied for, that in his belief the person whose testimony is required is a material witness.

In justice to the author, it may be proper, in this place, to observe, that the deficiencies, if such they should be thought, which the above proposals are calculated to supply, are not chargeable upon this bill any more than they are upon all the acts in the statute-book that have correspondent passages.

Sect.
XIX.
p. 16.
Costs to
await the
verdict.
Sect. XX.
p. 17.
Saving for
dwelling-
houses &
pleasure-
grounds.

Section XIX. provides, as is usual, that the costs of such a trial shall await the verdict.

Section XX. makes a saving for dwelling-houses and pleasure-grounds*.

So

* It would save paper were the six last sections generalized

So much concerning the ground-plot and the buildings. Next come the provisions relative to the *regimen* of the Labour-houses; these occupy the thirty-two following Sections, all but six, from the thirtieth to the thirty-fifth inclusive, which concern the disposal of convicts, previous to the commencement of their punishment.

Contents
of Sections from
XX. to
LII.

Section XXI. provides, that when the houses are ready, or nearly so, the Committees shall appoint officers, lay in stock, and establish regulations in the cases not provided for by the Bill: with power at any time to make additions and alterations: every regulation to be approved of by the Judges afore mentioned.

Seft.
XXI.
p. 17.
Power to
make re-
gulations
for the
Labour-
houses.

Section XXII. enumerates the different classes of officers to be appointed for each Labour-house: empowers the Committees to make removals and supply vacancies, and to exact security for the due execution of the respective offices.

Seft.
XXII.
p. 18.
Establish-
ment of
officers.

These officers are to be,

ralized by an act on purpose. The same thing may be observed respecting a string of provisions at the end of the bill.

Sect.
XXII.
p. 18.

1. Two visitors.
2. One governor.
3. One chaplain.
4. One surgeon or apothecary.
5. One storekeeper.
6. One task-master.
7. One gaoler.
8. "Such under-keepers, and other
" officers, as the Committee shall judge
" necessary."

Sect.
XXIII.
p. 18.
Governor
to have an
interest in
the work.

Section XXIII. respects the salary of the governors: it directs that this salary shall be so ordered by the Committee as to "bear a
" constant proportion to the quantity of la-
" bour performed in each house;" and arise chiefly, or, if possible, totally from that source: and this to the end, that "it may
" become the *interest* as well as the *duty* of
" each governor to see that all persons un-
" der his custody be regularly and profitably
" employed."

OBSERVATIONS.

The principle here laid down as the ground of the above provision, is an excellent lesson to legislators, and is of more use in that view, than from its seeming obviousness when announced, it might at first appear to be. 'Tis owing to the neglect of it, that we hear such frequent complaints of
the

Señ.
XXIII.
P. 18.

the inexecution of the laws; a misfortune ordinarily charged to the account of individuals; but which ought in fact to be charged upon the laws themselves. The direction here given is a happy application of that principle. It is by strokes like these that genius and penetration distinguish themselves from shallowness and empiricism. The means that are employed to connect the obvious interest, of him whose conduct is in question, with his duty, are what every law has to depend on for its execution. A legislator, who knows his business, never thinks it finished, while any feasible expedient remains untried, that can contribute to strengthen this connection. The Utopian speculator unwarrantably presumes, that a man's conduct (on which side soever his interest lie) *will* quadrate with his duty, or vainly regrets that it will *not* so.

The object in view in it, we see, is partly *oeconomical* and partly *moral*; that such a profit be drawn from the labour of the convicts as may altogether, or at least in part, compensate the expence of the establishment; and that the morals of the convicts may be improved by a habit of steady and well-directed industry. The means by which it aims at the attainment of this object, are the giving to the person who has the government of the convicts, an interest in causing the labour to be thus applied. This, as far as it goes, is excellent; but perhaps there are means by which the power applied to produce labour might receive a still further encrease. This
power

Sect.
XXIII.
p. 18.

power can operate no farther than as it comes home to the persons whose labour is in question. These persons are the convicts. Giving the governor an emolument in proportion to the labour they exert, it is expected, will cause them to exert more labour than they would otherwise; why? because the governor will employ such means as *he* has in his hands to induce them to exert it. These means must be either *punishment* or *reward*; these being the only certain inducements by which one man can influence the conduct of another. Of these two inducements, punishment is the most obvious, and at first view, the least costly to him who is to apply them. Taken singly, however, it is not always the most efficacious, nor in the end the most economical. The quantity of work done will depend upon the ability of the workmen; the quantity of work which a task-master can exact by dint of punishment, will depend upon the *apparent* ability of the workmen. Now, if the *apparent* ability of the workmen were always equal to the *real*, punishment alone might be sufficient to extract from him all the labour he can exert. But this is not the case: a man can always suppress without possibility of detection, a great part of the ability he *actually* possesses, and stifle in embryo all the further stock of ability he *might* have possessed in future. To extract, therefore, all the labour that can be got from him, it is necessary to apply reward in aid of punishment; and not only to punish him for falling short of the *apparent* measure of his ability,

but

but to reward him for exceeding it. Thus it is, that the course which recommends itself to *sentiment*, as the most humane, approves itself to *reason* as the most useful.

Sect.
XXIII.
P. 18.

It seems, therefore, as if it might be an useful supplement to the above provision, if the convicts themselves were to be allowed some profit, in proportion to the produce of their own labour. This profit should be the *gross* profit; because that depends upon themselves; not the clear profit, because that depends upon the oeconomy of the governor. Such a provision would have a double good effect, on the welfare of the public at large, in making their labour more productive; and on their own happiness, by making them take a pleasure in their business.

It is to be observed, however, that this regulation can have effect only in the case where the produce of the labour of one man can be distinguished from that of the labour of another. From a passage in section 27th, it looks as if the notion of the author were, that it could be done in all kinds of manufactures. But this, I fear, is hardly the case. If not, would it or would it not be worth while to restrict the employment of the convicts to such manufactures in which it *could* be done? Where it cannot, the profit that each man can reap from his own labour will be lessened in proportion as the number of his comrades is increased. To illustrate this,

Let

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p. 18.

Let the value of
the gross pro-
duce of each
man's labour
be, upon an
average,

$$\left. \begin{array}{l} \text{by the day} \end{array} \right\} \begin{array}{l} d. \\ 6 \end{array} \left\{ \begin{array}{l} \text{that is, by} \\ \text{the week} \end{array} \right\} \begin{array}{l} s. \\ 3 \end{array}$$

Let the profit al-
lowed him be
one-sixth,

$$\left. \begin{array}{l} \text{that is, by} \\ \text{the day} \end{array} \right\} \begin{array}{l} d. \\ 1 \end{array} \left\{ \begin{array}{l} \text{that is, by} \\ \text{the week} \end{array} \right\} \begin{array}{l} d. \\ 6 \end{array}$$

If he has five com-
rades, whose
work is blend-
ed indistin-
guishably with
his own, so
that there are
six persons in
all to share the
profit of his la-
bour, his share
will be but
one-sixth of
that one-sixth,
that is,

$$\left. \begin{array}{l} \text{by the day} \end{array} \right\} \begin{array}{l} \frac{1}{6} \\ \text{of} \\ 1 \\ d. \end{array} \left\{ \begin{array}{l} \text{by the} \\ \text{week} \end{array} \right\} \begin{array}{l} d. \\ 1 \end{array}$$

He shares, it is true, in the profit upon their labour; but over this he has not that command that he has over his own. He knows, therefore, that he cannot depend upon it. If he could depend upon it, it would not be worth his while to exert his own.

A question

A question that occurs here is, in what manner shall the workman be let in to participate of the profits? shall he be enjoined a certain task without profit, and then be allowed the whole profit upon the overplus? or, shall he be enjoined a less task, and then be allowed a share only in the profit upon the overplus? or, shall he be allowed a share, but of course a less share, upon every part of the produce of his labour, be it less or more? All these three expedients appear to be practised in different foreign work-houses. The first (or possibly the second) in the great house of correction at *Ghent* *; the second, in the house of correction at *Delft* in Holland †; the third, in the great house of correction in *Hamburgh* ‡. The first, however, is liable to this objection; if the task be such, as any man of the least degree of adroitness can perform, it must to some of the most adroit, be a very slight one; to such persons the reward will be a very lavish one; more certainly than is necessary, perhaps more than is expedient. If it be such as require more natural adroitness than falls to the share of every body, some will be altogether excluded from the reward. The second expedient too, will, in a greater or less degree, be liable to the one or the other of these objections. The third is free from both: this, therefore, seems to be the preferable one of the three.

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p. 18.

* See Howard 143.

† Ib. 132.

‡ Ib. 116.

Sect.
XXIII.
p. 18.

As to the making the emoluments of the governor bear a constant proportion to the quantity of labour, the best way seems to be to give him so much *per cent.* upon the produce of it, at the same time ensuring it not to fall short of such or such a sum; suppose one hundred pounds a year. The sum it is thus insured at, must, on the one hand, be *as much* as is requisite to induce a competent person to undertake the charge: on the other hand, it must *not* be so much as appears likely to come near the probable profit that might be made from the *per centage* upon the produce of the labour. If this profit were to be less than the salary allowed in lieu of it, or indeed, if it were but little more, it would not make it worth his while to bestow the trouble it might take him to improve that fund to the best advantage.

Sect.
XXIV.
p. 18.
Establishment of
officers
how variable.

Section XXIV. gives power to the Committees to "encrease, diminish, discontinue, " or vary the number of officers," with the approbation of the judges as before; "except by taking away or discontinuing the " offices of

- " 1. Visitor.
- " 2. Governor.
- " 3. Chaplain.
- " 4. Surgeon or apothecary."

OBSERVATIONS.

Possibly the meaning might have been more
10 clearly

clearly expressed by giving the power to suppress any of the officers mentioned in section 22d, (except as herein is excepted) or create any new ones, or alter the number of officers in each office. Thus ample, at least, I take the powers to have been, that were meant to be conferred.

Sect.
XXIV.
p. 18.

Section XXV. establishes the œconomical powers of the governor.

Sect.
XXV.
p. 19.
Governor
a body
corporate
—his
œcono-
mical
powers.

1. It constitutes him a body corporate.
2. It empowers him to contract for the articles wanted in the house: to wit,

1. For cloathing, diet, and other necessaries, for the use of the convicts.

2. For implements and materials of any manufacture they may be employed in.

3. It empowers him to carry on such manufacture, and to sell the produce.

4. It impowers him to draw on the treasurers of the several counties included within the district, for the amount of the above expences.

5. Also for the other expences of the house, under the following heads, *viz.*

1. Salaries.

2. Wages.

3. Coroner's fees.

4. Funeral charges.

D

5. Re-

Sect.
XXV.
p. 19.

5. Repairs.

6. Other necessaries in general.

6. It impowers him to draw for the first quarter in advance: such draught being allowed by the Committee, and countersigned by their clerk.

7. Lastly. Whatever monies he receives as above, it enjoins him to apply to the purposes for which they are issued.

OBSERVATIONS.

It could hardly have escaped the notice of the author, to what a degree the power of making these contracts lies open to abuse; and yet, upon the face of the clause now before us, this power is committed solely to the governor, without any express reference to the Committee for their concurrence. The danger, however, is not altogether unprovided against. They have a general power of displacing him; and the dependance seems to have been upon their availing themselves of that power to exercise an occasional negative upon these contracts, or to make such general regulations they should deem requisite to obviate the abuse.

Sect.
XXVI.
p. 19.
Expences
how to be
appor-

Section XXVI. proportions the sum to be drawn for upon each county, &c. within the district, to the average number of the convicts

viets, as declared in Section 8*. Disputes concerning the proportions it refers to the Judges, as before †, whose determination it makes final. tioned among the courts.

Section XXVII. prescribes the accounts that are to be kept by the governor, store-keeper, and task-master.

Sect.
XXVII.
p. 20.
Accounts
to be
kept.

1. The governor is directed to enter into a book "all accounts touching the maintenance of the house, and the convicts therein."

2. The governor and storekeeper are each to keep separate accounts of all the stock brought into the house.

3. The store-keeper is to deliver out the stock to the task-master, and take receipts from him.

4. The task-master is to deliver out the work to the convicts.

5. The task-master is to keep accounts of the quantities daily worked by them respectively.

6. He is to return the materials, when wrought, to the store-keeper, taking his receipt for them.

7. He is to dispose of the wrought materials, with the privity of the governor, to

* See Tab. II. Col. 5.

† See Sect. 11, 21.

Sect.
XXVII.
p. 20.

whom he is to pay the produce: for which the governor is declared to be accountable to the Committee.

8. The governor and store-keeper are to keep separate accounts of the materials wrought and disposed of under the following heads:

1. Species and quantity of the materials in question.
2. For what fold.
3. When fold.
4. To whom fold.

Sect.
XXVIII.
p. 21.
— and
audited.

Section XXVIII. directs the manner in which the above accounts shall be audited by the Committee:

1. They are to examine the entries, to compare them with the vouchers, to verify them by the oaths of the governor and store-keeper, and upon that to allow or disallow them.

2. An account, if allowed, is to be signed by two or more members of the Committee.

3. If the balance should be in favour of the governor, they are to pay him by draughts in the manner above set forth *: if

* See Sect. XXV.

against him, they may either leave it in his hands, or order it to be paid over as they think proper.

Sect.
XXVIII.
p. 21.

Section XXIX. empowers the Committee, in case of their suspecting fraud, to examine upon oath any persons whatsoever respecting the above accounts; and in case of any false entry, or fraudulent omission, or other fraud, or any collusion of an officer or servant with any other officer or servant, or with any other person, to dismiss the officer or servant, and appoint another: or, if they think fit, to indict the offender at the next Sessions of the Peace for the place wherein the house is situated: and it limits the punishment to a fine not exceeding ten pounds, or imprisonment not exceeding six months, or both: saving the right of action to any party injured.

Sect.
XXIX.
p. 21.
Their
power as
auditors.

OBSERVATIONS.

With respect to the punishment of officers, this section, when compared with section 24, seems not altogether free from ambiguity. After empowering the Committee to dismiss officers for misbehaving in any of the manners specified, it goes on and subjoins, in the disjunctive, another mode of punishment; they may be dismissed, it says, “or” indicted. It looks, from hence, as

Sect.
XXIX.
p. 21.

if it were not the intention of the author, that an offender of the description in question should be punished by dismissal and indictment both; yet this he might be, notwithstanding, under the general power of dismissal at pleasure, given by section 24; unless this section be understood *pro tanto* to repeal the other.

It may be said by way of reconciling the two sections, that the sense is, that the offender may, if thought proper, be dismissed, or he may be indicted; but that if he has been dismissed, he is not to be indicted. But suppose him to have been *indicted first*, and perhaps convicted, may he, or may he not then afterwards be *dismissed*?

As to the *quantum* of punishment allowed to be inflicted upon indictment, this may, perhaps, be liable, though in a much inferior degree, to the objection against a correspondent provision stated in section 18.

With respect to the jurisdiction within which the indictment is to be preferred, may there not be some danger in confining it to the sessions of the peace for the very place within which the house is situated? Suppose the delinquent to be a governor, and the house to be situated in a small town, such as *Warwick* or *Wells* *; the house at *Warwick* is calculated for 118 convicts; that at *Wells* for 126. The contracts for the maintenance of the house are all to be made by the governor; might not this privilege give him a con-

* See Table II. Col.

considerable degree of influence among the grand jurymen for such small places as those towns. There are no separate sessions indeed for *Wells* or *Warwick*; so that the grand jurymen at the sessions there, would come out of the body of the county. But it might very well happen, on any given occasion, that the grand juries for the respective counties might, the greater part of them, come out of those towns; and the towns of *Lincoln*, *Norwich*, *Durham*, *York*, *Gloucester*, *Worcester*, *Exeter*, and *Chester*, all of them places wherein the Committees are to meet, and within which therefore Labour-houses are likely enough to be situated, have all separate sessions of their own. The houses, indeed, are directed not to be “within” any town, if any other convenient place can “be found;” that is, not encompassed with buildings; but this may not every where hinder their being within the jurisdiction: nor is the direction peremptory; and they are recommended to be *near* a town, to wit, a town of trade. The danger certainly is not very great; but it may be obviated without difficulty. All that is necessary is, to empower the Committee, if they think fit, to prefer the indictment in any adjoining county at large; or in London or Middlesex, if the district be in the home circuit.

Sect.
XXIX,
p. 21.

Section XXX. declares for what offences, and for what terms, convicts may be committed to these houses. These are

Sect.
XXX.
p. 22.
Convicts
what,
when and
for what

D 4

For

terms to
be com-
mitted to
these
houses.

For petty larceny, { any term not exceed-
ing two years.

For offences punishable by transportation,	{	for 7 years	{	any term not exceeding 5 years, nor less than 1 year.
		for 14 years		{

Offenders are to be sent to the houses as soon as the Committee certifies to the *judges*, as before *, that the house is ready to receive them.

Sect.
XXXI.
p. 23.
—how to
be dis-
posed of
till the
house is
ready.

Section XXXI. empowers the several courts in the mean time, until the Labour Houses are made ready, to commit offenders to the *County Bridewells*, injoining the Justices in Sessions to fit up those places for the “temporary reception, safe custody, “employment, and due regulation of the offenders” that are to be sent there: and it declares that for such time the places in question shall be deemed Labour-houses, for

* See Sect. 11, 21, 26.

all the purposes within the meaning of this Act.

Sect.
XXXI.
p. 23.

Section XXXII. is confined to *male* convicts. It empowers Courts to commit offenders of the male sex to work upon the Thames, or upon any other river that may be fixed upon for that purpose by an order of council. These are to work under the direction of a superintendant: to be appointed, for the Thames, by the Justices of Middlesex; for any other river, by the Justices of such adjoining counties as shall be fixed upon by the privy council.

Sect.
XXXII.
p. 24.
—what
to be or-
dered to
hard la-
bour up-
on rivers.

The terms	}	not to	{	1 year,	{	nor to	}	7 years.				
for which									}	be less	}	exceed
they may												
be com-												
mitted are	}		{		}							

The provisions of this Section are in the preambular part of it declared to be designed “for the more severe and effectual
“punishment of *atrocious* and daring of-
“fenders.”

OBSERVATIONS.

The confinement and labour upon the Thames is looked upon, it appears from this, as being severer
than

Sect.
XXXII.
p. 24.

than the confinement and labour is at present in the county bridewells, or is expected to be in the Labour-houses in question. It is not expressly referred to the option of the courts, which of these two species of hard-labour or confinement they will order a man to: but as, by separate clauses, they are empowered to order a convict of the description in question to each, and not peremptorily enjoined to order him to either; it follows of necessity, that it was meant they should have that option. The preambular words above quoted being too loose to operate in the way of *command*, can be intended only for *direction*.

With regard to the superintendent under whose management the Thames convicts are to be, it speaks of him as one who is *to be* appointed by the Middlesex Justices. Now, the present act under which the present superintendent *has* been appointed, is, by the last section of the bill to be repealed. This being the case, it looks as if a fresh appointment of the same or some other person to be superintendent would be necessary, unless some slight alteration were made in the wording of this clause.

Sect.
XXXIII.
p. 24.
Proviso
for con-
victs par-
doned on
condi-
tion.

Section XXXIII. extends the provisions respecting convicts sentenced to transportation, to capital convicts pardoned on that condition: and it allows and enjoins any one Judge, before whom the offender was tried, upon a written notification of his Majesty's mercy, given by a secretary of state, to allow the offender

offender the benefit of a conditional pardon, as if it were under the Great Seal.

Sect.
XXXIII.
p. 24.

Section XXXIV. prescribes the method in which an offender is to be conveyed from the place of sentence to the place of punishment, together with the documents by which the right of conveying him thither, and keeping him there, is to be established.

Sect.
XXXIV.
p. 25.
—how to
be con-
veyed,
and un-
der what
certifi-
cate.

Upon the making of any order for the commitment of an offender to hard-labour, a certificate is to be given by the clerk of the court to the sheriff or gaoler who has him in custody.

In this certificate are to be specified,

1. The Christian name of the offender.
2. His sur-name.
3. His age:
4. His offence.
5. The court in which he was convicted.
6. The term for which he is ordered to hard-labour.

Immediately after the receiving such certificate, the gaoler is to cause the offender to be conveyed to the place of punishment, and to be delivered, together with the certificate, as the case is, to the governor or superintendent, or "such person or persons
" as

Sect.
XXXIV.
p. 25.

“ as such governor or superintendent shall
“ appoint :” and the person who receives
him is to give a receipt in writing, under
his hand : which receipt is declared to be a
sufficient discharge to the person who deli-
vers him. This certificate “ the governor
“ or superintendent, or other person or per-
“ sons to whom such offender shall be so
“ delivered,” is required “ carefully to pre-
“ serve.”

OBSERVATIONS.

With respect to the words, “ such person or per-
“ sons as such governor or superintendent shall ap-
“ point,” I doubt some little difficulty may arise.
Does the passage mean any person in general acting
under the governor or superintendent ? any person
employed by them as a servant in the discharge of
the duties of their office ? or does it mean, that
some one particular person or persons should be
appointed by them for this particular purpose ; so
that a delivery made to any other person in their
service should not be good ? On the one hand, it
is not every person who may be occasionally em-
ployed in the service, whom it would be safe to
trust with such a charge : on the other hand, it
might be attended with a good deal of inconve-
nience, if upon any occasion the governor or su-
perintendent, and any one person respectively ap-
pointed by them for this purpose, should by any
accident be both absent or disabled by illness. A

remedy to both inconveniencies may be the directing the governor to give standing authorities for this purpose in writing, to such a number of his servants, as may obviate any danger there might be of their being all out of the way at the same time. In such case, there could be no inconvenience in making it necessary to the discharge of him who is to deliver the prisoner, that he who is to receive him, shall have produced and shewn him such authority.

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XXXIV.
p. 25.

Section XXXV. provides for the fees and expences of conveyance. The clerk of the court, on granting the certificate, and the sheriff or gaoler, on delivering the offender, are to have the same fees as would respectively have been due to them had he been "sentenced to" transportation.

Sect.
XXXV.
p. 26.
Charges
of conveyance.

The expence of those fees, and the other expences of conveyance, are to be borne by the jurisdiction over which the court presides; and are to be paid by the clerk of the court, upon an order made by the General Sessions of the peace for the jurisdiction.

Section XXXVI. appoints, in general terms, the powers a governor or superintendent, or persons acting under them, are to have, and the punishments they are to be liable

Sect.
XXXVI.
p. 26.
Governors and
Superintendents,

their general powers and punishments.

Sect.
XXXVII.
p. 27.
Convicts
—works
they are
to be employed
in.

liable to in case of misbehaviour: those powers and these punishments it declares to be the same as are incident to the office of a sheriff or gaoler.

Section XXXVII. gives directions respecting the species of work in which the convicts are to be employed. For this purpose it marks out two classes of employments; correspondent to so many different degrees of bodily strength. Those whose strength is in the first degree, whether of the one sex or the other, it destines to labour of the “hardest and most servile kind:” those whose strength is in a lower degree, to “less laborious employments:” and in determining whether an offender shall be deemed to come under one of these classes or another, it directs that the three circumstances of *health*, *age*, and *sex*, be all taken into consideration.

Of each of these classes of employment it gives examples. Of the hardest and most servile kind it proposes,

1. Treading in a wheel.
2. Drawing in a capstern for turning a mill, or other machine or engine.
3. Beating hemp.
4. Rasping logwood.

5. Chopping rags.
6. Sawing timber.
7. Working at forges.
8. Smelting.

Sect.
XXXVII.
p. 27.

Of the less laborious class, it instances :

1. Making ropes.
2. Weaving sacks.
3. Spinning yarn.
4. Knitting nets.

Of these, and other such employments, it leaves it to the Committees, to choose such as they shall deem most conducive to the profit, and consistent with the convenience, of the district.

Section XXXVIII. regulates the lodging of the offenders.

Sect.
XXXVIII.
p. 27.

1. The males are at all times to be kept
“separate from the females; without the
“least communication on any pretence
“whatsoever.”

—their
lodging
and man-
ner of
working.

2. Each offender is in all cases to have a separate room to sleep in.

3. Each offender, as far as the nature of his employment will admit, is to work apart from every other.

4. Where the nature of the employment requires two persons to work together, the
room

Sect.
XXXVIII.
p. 27.

room they work in is directed to be of
“suitable dimensions.”

5. Such two persons shall not continue together but during the hours of work.

6. Nor shall the same two persons work together for more than three days successively.

7. If the nature of the work requires “many” to be employed together, “a common work-room or shed” may be allotted them.

8. But in this case the governor, or somebody under him, “shall be constantly present to attend to their behaviour.”

9. If the work require instruction, instructors shall be provided, who shall be paid by the Committee.

It likewise gives some directions concerning the dimensions and structure of the lodging-rooms.

1. They are } length { twelve feet.
not to exceed in } breadth { eight ditto.
 } height { eleven ditto.

2. They are to have no window within six feet of the floor.

OBSERVATIONS.

Nothing can be better contrived than this little string of regulations. They appear to be
such

be such as cannot but be conducive in the highest degree to the two great purposes of safe custody and reformation. They involve, it is true, a very considerable degree of expence ; but perhaps there is no case in which there is more to be said in behalf of a liberal supply.

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XXXVIII.
p. 27.

With regard, indeed, to the first of the above restraints, this, it must be confessed, is of itself, in some cases, a pretty severe, and upon the whole, rather an unequal punishment. The amorous appetite is in some persons, particularly in the male sex, so strong, as to be apt, if not gratified, to produce a serious bad effect upon the health : in others, it is kept under without difficulty. On the score of punishment, therefore, this hardship, could it be avoided, would, on account of its inequality, be ineligible. Under a religion which, like the Mahometan or Gentoo, makes no account of the virtue of continence, means, perhaps, might be found not inconsistent with the peace of the society, by which these hardships might be removed. But the Christian religion, at least according to the notions entertained of it in protestant countries, requires the temporal governor to put an absolute negative upon any expedients of this sort. Since then the gratification of this desire is unavoidably forbidden, the best thing that can be done is, to seclude the parties, as much as possible, from the view of every object that can have a tendency to foment it. On this account, the first of these regulations is as strongly recommended by humanity as a means

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XXXVIII.
p. 27.

of preserving the quiet of each individual convict, as it is by policy as a means of preserving the peace of the whole community of them at large. Happily the dispositions of nature in this behalf seconds, in a considerable degree, the dispositions of the legislator. Hard-labour, when not compensated by nourishing and copious diet, has a strong tendency to diminish the force of these desires, whether by diverting the attention, or by diminishing the irritability of the nervous system, or by weakening the habit of body: and the desire, when the habit of gratifying it is broken off, subsides and becomes no longer troublesome.

With regard to the size of the rooms, this we see has limits set to it on the side of augmentation; on the side of diminution it has none. This partial limitation, I must confess, I do not very well perceive the reason of. Errors, if at all, seem more to be apprehended on the side of diminution than on that of augmentation. That the rooms should not be less than of a certain size, is conducive to health. The danger seems to be, least the committees should, out of oeconomy, be disposed to put up with narrower dimensions. If the sums provided by the bill out of the national fund are not sufficient, the deficiency, we may remember, is to be provided for by the counties.

Sect.
XXXIX.
Days and
hours of
work.

Section XXXIX. prescribes the *times* of work.

1. The days of work are, unless in case of

of ill health, to be all days in the year:
except

Se&t.
XXXIX,
p. 28.

1. All Sundays.
2. Christmas-day.
3. Good-Friday.

2. The hours of work, as many as day-light and the season of the year will permit, including two intervals: *to wit*

1. For breakfast - - - Half an hour.
2. For dinner - - - One hour.

3. At the close of the day, when working-time is over, such of the materials and implements as admit of removal, are to be removed from the work-rooms to places proper for their safe custody, there to be kept till it comes round again.

OBSERVATIONS.

With respect to the hours of work, the duration of day-light, if taken for the sole measure, (as one would suppose it to be by this passage in the bill) would, I doubt, be found rather an inconvenient one. In the depth of winter, the time of working can scarcely begin so early as eight in the morning, nor continue so late as four in the afternoon. In the height of summer, it may begin earlier than three in the morning, and it may continue later than nine in the evening; but if from eight till four, that is eight hours, be
E 2 enough,

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XXXIX.
p. 28.

enough, from three to nine, that is sixteen hours, were even nothing more than the *duration* of the labour to be considered, is surely too much. But labour of the same duration and intensity, is severer in summer than in winter: heat rendering a man the less able to endure it. The better way, therefore, seems to be, if not to make the time of working longer in winter than in summer, at least to make it of an equal length. As eight hours, or the least time of day-light, therefore, is evidently too short a time, this will make it necessary to have recourse to lamps or candles. As the walls and floors will of course be of brick or stone, without any combustible linings, these artificial lights can scarcely be attended with any danger.

Whatever be the hours of labour fixed upon as most proper for an average, there are some among the employments above mentioned *, that will probably be found too laborious for a man to be confined to during the whole time. In such a case, either he must remain without any thing to do, or employed in some kind of work so much less laborious as to serve as a kind of relaxation from the other. The latter course seems beyond comparison the best. On this account, it seems as if it would be of advantage, that no person should be confined exclusively to the most laborious of the classes of employments above specified; but that such offenders as were destined principally to an employment of that class should, for some part of the day, be turned over to one of the se-

* See Sect. XXXVII.

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XXXIX.
p. 28.

dentary kind. On the other hand, neither would it be so well, perhaps, that offenders of the least robust class should be confined wholly to employments purely sedentary. The relief of the former and the health of the latter would, it should seem, be best provided for by a mixture of the laborious and the sedentary. By this means, the time of the convicts might, it should seem, be better filled up and the total quantity of their labour rendered more productive.

The great difficulty is, how to fill up their time on Sundays : for, with regard to men in general, more particularly to persons of this stamp, the danger always is, that if their time be not filled up, and their attention engaged, either by work or by innocent amusement, they will betake themselves either to mischief or to despondency. Divine service, it is true, is appointed to be performed, and that twice a day ; but that, according to the ordinary duration of it, will not fill up above four hours ; that is, about a quarter of the day.

To fill up the remainder, four expedients present themselves. 1. One is, to protract the time of rest for that day ; which may be done either by letting them lie longer, or sending them to bed earlier.

Another is, to protract the time of meals.

A third is, to protract the time of divine service.

A fourth is, to furnish them with some other kind of employment.

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The two first are commonly enough practised by the working class of people at large who are at liberty. But when put both together, they will not go any great way.

The time of attendance at church might be lengthened in two ways. 1. By adding to the ordinary service a standing discourse or discourses particularly adapted to the circumstances of the congregation. This might consist, 1st, of prayers, 2dly, of thanksgivings; neither of which, however, could, with propriety, be very long; and 3dly, of a discourse composed of moral instructions and exhortations. The instructions and exhortations would naturally have two objects; the conduct of the hearers, 1st, during the continuance of their punishment: 2dly, after their restoration to society.

2. Another way of adding to the church service is by *music*. This will, at any rate, be a very agreeable employment to many; and, if properly managed, may be a very useful one to all; even to those who have no natural relish for music in itself. The influence which church-music has over the generality of men in bringing them to a composed and serious turn of mind is well known. The music might be either vocal only or assisted by an organ. In either case, the vocal part might, with a little instruction, be performed by the congregation themselves; as it is at the Magdalen, and other public foundations.

4thly, As to other employments, *walking* (in as far as their limits will permit them) might go
some

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some way towards filling up their time. This would be an additional use for the garden proposed in the observations to section 13. On this occasion, to prevent insurrections and cabals, the convicts might be connected two and two together; a slight chain, not heavy enough to incommode them by its weight, might answer the purpose: each offender would, by this means, be a clog and a spy upon his companion. In this view, the idea adopted in section 38, with regard to the manner of working, might be pursued, so as that the same two persons should not be coupled together two successive days; nor should it be known before hand what two persons are to be together. To prevent this, the names should be drawn out every day by lot. By this means, supposing an offender had succeeded so far in a project of escape or mischief, as to engage some one of his comrades to join with him, he could not, for a long time afterwards, unless by a very extraordinary turn of chance, resume the conversation without the privity of two others, whose dispositions could not be known before-hand. If the expedient of a garden were to be employed, such an arrangement would have a farther good effect, in rendering it more difficult for them to wander out of bounds, and do mischief to the cultivated part of it.

The interruptions of bad weather, and the shortness of the day, at any other time than the height of summer, would still leave a considerable part of their time, which could not be filled

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up in this manner : either, therefore, they must be permitted to employ themselves in some other manner, or they must be compelled to absolute inaction. They cannot, as other persons of the working class do, employ themselves on those days in visiting their friends.

They may employ themselves, it is true, in reading the Bible, or other books of piety ; but there will be a great many who cannot read ; and of those who can, many will have so little inclination, that on pretence of reading, they will do nothing.

It is to little purpose to issue directions which, in the nature of them, furnish no evidence of their having been complied with. The not attending to this, is a common stumbling-block to superficial reformers. The evidence of a man's having complied with a direction to work, is the work he has done : this may be judged of at a glance ; but what is the evidence of a man's having employed himself in reading ? His giving a good account of what he has read ? Unquestionably : but such an one as it would be to little purpose to think of exacting : for, though his attention has been diligent, his memory may be weak. Besides, who is to judge ? who could find time enough to catechize such a multitude ? It would require no small number of schoolmasters to turn such an establishment into a school.

Upon the whole, I can see no better expedient at present than that of permitting them (not *obliging* them, but *permitting* them) to betake themselves

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selves to some easy sedentary employment ; such as knitting, spinning, or weaving, that might afford them a small profit. This profit, if made their own, would make the employment pleasant to them. Devotion, it is true, is better on such a day than industry ; but industry is better on every day than total idleness ; that is, than despondency or mischief. The necessity in this case seems at least as strong as that which has induced the legislature to permit the practice of certain trades on the day in question, and which is universally understood to authorize persons of all descriptions to pursue most of their household occupations. It were hard if an institution, confessedly no original part of the religion we profess, but only adopted into it by early practice, and in later times sanctioned by human authority, must, at all events, be permitted to oppose the main ends of religion, innocence and peace.

I speak all along under correction ; and what I propose is only upon the supposition, that no other means can be found of filling up their time in a manner more suitable to the day.

With regard to the making the windows not less than six feet above the floor, this regulation is also recommended by Mr. Howard*. His design in it I cannot find he has any where mentioned. I suppose it to be to prevent the convicts from looking out. The prospects or moving scenes, whatever they might be, which the windows, if lower, might open to their view, might serve to distract their attention from their work. This
privation,

* P.

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privation may be considered in the light of an independent punishment, as well as in that of a means of ensuring their subjection to the other.

Besides this, Mr. Howard is strenuous against glass windows; he would have nothing but open grating. In this case, the height of the windows would be a means, in some measure, of sheltering the inhabitants from the wind, though, on the other hand, it would expose them more to rain. I know not, however, that he has been any where explicit in giving his reasons for reprobating these conveniences.

One reason may be, the ensuring a continual supply of fresh air; but this does not seem conclusive. In apartments, indeed, so crowded and ill-contrived as many of those he had occasion to visit, the windows being glazed, might, by accident, be attended with bad effects; for, I think, he complains in many places, of the closeness of such rooms, owing, as it seems, either to the windows not being made to open, or to the inattention or ignorance of the gaoler or prisoners in not opening them. But under the excellent regulations provided for these houses, the apartments never will be crowded; they will not be crowded more than those of a private house; and in a private house it never surely was understood to be necessary, or even of use to health, that there should be nothing but grates for windows. If the convicts were to eat in a common room, the setting open the doors and windows for an hour and a half (which is the time allotted them for meals) would be quite sufficient for the purpose of ventilation.

Another

Another reason for having nothing but grating, may be the contributing to give a gloomy and distressful appearance to the outside of the prison. This reason, as far as it applies, seems to be a very good one. But it applies only to the front of the house; for this is all that need, or indeed, that ought, to be exposed to the eyes of passengers. The apartments thus exposed, might be destined for those whose labour was the hardest, and whose treatment, upon the whole, was designed to be the severest; or the whole or a great part might be taken up with common working rooms not made use of for lodging rooms.

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Section XL. regulates the articles of diet and apparel. For food the convicts are to have

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Diet and
apparel.

1. Bread, and any coarse meat, “ or
“ other inferior food.”
2. For drink, water or small beer.
3. The apparel is to be coarse and uniform, with certain obvious marks or badges on it. The declared purposes of these marks are, 1st to humiliate the wearer, 2dly to prevent escapes.
4. The articles under the above heads are to be ordered in such manner as the “ Committee shall from time to time appoint.”
5. No offender is to be permitted to have
any

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any other food, “ drink, or cloathing, than
“ such as shall be so appointed. ’

Persons wilfully furnishing him with any articles of the above kind, other than what shall have been so appointed, are to forfeit not more than 10*l.* nor less than 40*s.*

OBSERVATIONS.

The expedient of marking the apparel is well-imagined, and quadrates with the practice of several foreign countries *. It is designed, we see, to answer two purposes: 1st, that of a separate punishment, by holding up the wearer in an ignominious light: 2dly, that of safe custody, to ensure the continuance of the whole punishment together. The first of these purposes it may be made to answer as completely as any other that can be proposed: with respect to the latter, it will readily be acknowledged not to be perfectly efficacious.

Marks employed for this purpose, may be either *temporary* or *perpetual*. Against perpetual marks in every case then, except where the confinement is meant to be perpetual, there is this conclusive objection, that they protract a great part of the punishment beyond the time that was meant to be prescribed to it. Temporary marks may either be *extraneous* or *inherent*. The marks here proposed are evidently of the former kind. These, so long as they continue, are very efficacious

* See Howard on Prisons.

means of detection, and may be made more palpable than any that are inherent. They serve very well, therefore, as obstacles to an escape during the first moments : in short, until such time as the fugitive can by force or favour procure fresh apparel. But if he is once housed among his friends or confederates, the use of them is at an end. If his person be not known, he may go about boldly like another man.

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Inherent marks seem never hitherto to have been thought of. These may be produced by either *mechanical* means or *chymical*.

Instances of *mechanical* means are the partial shaving of the head, or of the beard, or the chin, or mouth ; or the shaving of one eye-brow. But the mark made by the partial shaving of a part of the face, of which the whole is usually kept shaved, is as soon got rid of as any mark that is but extraneous : besides that, it is inapplicable to boys and women. The mark made by the shaving of one eye-brow seems to promise better ; but it is not free from all objections. In the first place it is not absolutely a sure one. Some persons have naturally so little hair on their eye-brows, that, if the whole of it were taken off from both, it might not be missed : and artificial eye-brows are said to have been made of mouse-skin, or in other ways, and that so natural, as not to be detected without previous suspicion. In the next place, there is some danger that a mark continually renewed, as this must be, by repeated shavings, would be in some degree perpetual. If the same eye-brow were to be constantly subjected to the operation, the hair might

Sect. XL. be so thickened as to appear different from the
 P. 28. other eye-brow. If sometimes one eye-brow and
 sometimes the other were to be shaved, there must
 frequently be times when the growth of them will
 be alike, and the distinction no longer apparent.
 As far then as it goes, the best expedient seems to
 be the keeping them constantly both shaved.

Instances of *chymical* means of producing marks
 are washes applied to the forehead, or to one or
 both cheeks, or, in short, to the whole face, so as
 to discolour it. Chymistry furnishes many washes
 of this sort. Of several of these I have often un-
 designedly made trial upon myself. Various me-
 tallic solutions produce this effect in a state so di-
 luted as prevents any objection on the score of
 expence *. The stain lasts without any fresh ap-
 plication, as long as the *stratum* of skin which it
 pervades; that is, to the best of my recollection,
 about a week. No other washes have ever yet
 been found to discharge it.

Marks of this kind, we see, cannot be put off
 like those of the former; nor, if made as extensive
 as they may be, can they be concealed without
 such a covering as would be almost equally cha-
 racteristic with the mark itself. When the term
 of punishment was so near being expired, that it

* Solution of gold in *aqua regia* produces a purplish
 colour, solution of silver in *aqua fortis*, and solution of
 mercury in the same acid, a black. Solution of silver
 is the operative ingredient in several of the fluids that
 are advertised to dye the hair.

could manifestly not be worth while to run the risk of an escape, they might be refused. For greater security, they might be so shaped, perhaps, as to express the surname of the offender, the first letter of his Christian name, and the name of the place in which the labour-house he belonged to was situated.

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One great advantage of these permanent marks with respect to the offender, is, that they would render the use of *chains* less necessary. The convicts upon the *Thames*, in consequence of repeated escapes, are made to work constantly in fetters.

By Section XLI. officers and servants belonging to the house are specially restrained from contravening the regulations established in the preceding Section. Upon any such delinquency the offender is to be suspended by the governor forthwith: the governor is to report him to the visitors, and the visitors to the Committee at their next meeting. The Committee is to enquire upon oath, and, if found guilty, to punish him by

Sect.
XLI.
p. 29.
Penalties
on officers
infring-
ing the
above re-
gulations.

1. Forfeiture of his place;
2. Or fine, not more than ten pounds;
3. Or imprisonment, for not more than six months.
4. Or any number of such punishments in conjunction.

An

Sect,
XLI.
p. 29.

An exception is made with regard to any diet or liquors ordered, in case of illness, by the surgeon or apothecary.

OBSERVATIONS.

The fine in this and the preceding section is not liable to the objection made to the like provision in section 29. The profit of the offence can never, in any shape, come nearly equal to the greatest *quantum* of the fine. Let the offences in the two cases be compared, it will be seen how much greater the temptation is in the latter than in the former.

The regulations in this and the preceding section, about not punishing the convicts with any extra articles of consumption, might need to be a little altered, if what I have ventured to propose concerning the allowing them a part of their earnings * were to be adopted. These earnings must either be hoarded up for them, to be given them at their discharge, or allowed them to be spent. In the first case, the danger is, lest an advantage so distant, should not, in their imprudent minds, have influence enough to operate as an inducement. "I may be dead before then," a man may say, "and what use will all the money be of to me? besides, if I am alive, how can I be sure that I shall get it? What need have I then to punish myself with working more than

* See Observations to Sect. XXIII.

"I am

“ I am obliged to do ? ”—I should not, therefore, expect any very general or considerable good effect from such an allowance, without the liberty of spending it, or at least a part of it, in present. The business then would be, to determine the articles in which they might be allowed to spend it. Even drink, so it be not any of those drinks that are known commonly by the name of spirituous liquors, need not be absolutely excluded : but, for very good reasons, which are strongly insisted on by Mr. Howard †, no profit upon the drink should be allowed to the governor, or any persons under him ; or else (what would come nearly to the same thing) if there were a profit allowed upon that article, it should not be greater, nor indeed so great, as the profit to be allowed upon the other articles among which they were to be permitted to take their choice. The smallness of their fund would probably of itself be sufficient to limit their consumption within the bounds of sobriety. If not, the quantity of drink of each sort, which any one man should be allowed to purchase, might be expressly limited. The circumstances of their being so much apart from one another, and so much under the eye of their inspectors, would obviate the difficulty there would be otherwise in carrying such a limitation into effect.

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† P. 49.

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Section XLII. makes provision for the equipment of the offender upon his discharge. Upon his commitment, the cloaths he brings with him are to be cleaned, ticketed, and laid up. Upon his discharge they are to be delivered back to him, together with such additional cloathing as the visitors shall think proper. A sum of money is also to be allowed him for his immediate subsistence, to the amount of not more than Five Pounds, nor less than Forty Shillings. And if he has behaved himself well during his confinement, the visitors are to give him a certificate to that effect under their hands.

OBSERVATIONS.

There is something singularly characteristic in the foresight and humanity displayed in this provision. It is copied from the experimental act of 1776. After a long seclusion, the convict is once more turned adrift into society. His former connections are by this time, perhaps, dissolved; by death, by change of abode, or by estrangement: at any rate, he is probably at a distance from them. His known delinquency and his punishment; though, after such a course of discipline, it is to be hoped it will not operate upon *all* persons so as to prevent their employing him, may, however, operate upon *many*. Mean time, if he be
totally

totally unprovided, he must either sink at once into the idleness and misery of a poor-house, or beg, or starve, or betake himself to courses similar to those which brought him to the place of punishment he is just freed from. The expedient, therefore, of giving him a temporary supply, is an highly proper one; though not so obvious as for the credit of human sagacity and compassion it were to be wished it were.

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XLII.
P. 29.

But supposing an offender's behaviour to have been such as renders it improper for the Visitors to give him the certificate here mentioned. What is to become of him then? Were no certificate to be given in any case, some persons might, perhaps, be induced to run the hazard of employing a convict, to whom it would not have been proper to have granted one. But when it is known that a certificate of good behaviour is granted to the generality of the convicts, the denial of such a certificate to any one amounts in fact to a certificate of the contrary. In such a case, it is not very probable that he will find employment any where. The supply provided for him, liberal as it is, can *relieve* him only, not *save* him, from the above-mentioned dilemma.

In such a case, I see but two courses that can be taken. One is, to empower the Committee to continue him in his confinement, till his behaviour shall have entitled him to his certificate: the other is to enlist him by compulsion in the land or sea service. How far it would be consistent with the honour of either of these services to

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admit a man with such a stamp of uncanceled ignominy upon him, is more than I can take upon me to determine. At any rate, it seems hardly proper to let him rank upon a par with honest men. In the sea service, provisions being found him, his pay might very well bear to be reduced below the common level: in the land service, provisions not being allowed, the subsistence is too bare to admit of the least reduction.

It is to be hoped, indeed, that after so strict and well-regulated a course of discipline as that prescribed by the bill, there will be very few convicts to whom it will be necessary to deny the certificate in question; but it is fit that every case that can happen, should be provided for.

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XLIII.
p. 30.
Convicts
to be di-
vided into
classes.

Section XLIII. provides that the offenders shall be divided into three classes; in each of which every offender is to be ranked, during an equal part of his time: and as he advances from a prior to a subsequent one, his confinement and labour are to be gradually less and less severe. The different gradations of severity are to be settled from time to time by regulations to be made by the Committee, so as not to clash with the provisions of this Bill.

OBSERVATIONS.

This division of the convicts into classes will be examined, when we come to consider the uses that are made of it.

Section

Section XLIV. regulates the furniture and police of the lodging-rooms.

Sect.
XLIV.
p. 30.
Furniture
and po
lice of the
*Lodging-
rooms.*

1. Every lodging-room is to be “ provided with matting for lying upon, a “ coverlid, and two or more coarse blankets.”

2. “ Also with proper tools or instruments “ for their employment.”

3. No person (except as herein is excepted) is to “ be permitted to go at any “ time into these rooms, or to see or converse with the offenders.”

4. Persons excepted are, 1. The officers and servants of the house: 2. Any person who has an order from any member of the Committee.

5. At night, as soon as the time of work is over, a bell is to be rung, the doors of the rooms locked, and the lights in them put out: and from that time, till the hour of work comes round again, a watchman is to patrol over every part of the house every half hour at least.

OBSERVATIONS.

Under the article of bedding, I see no mention made of *sheets*. Was this omission undesigned, or was it meant that they should have none? or would not the use of linen, if not absolutely necessary,

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cessary, at least be conducive however to the preservation of their health? Mr. Hume, I think, in his history, Mr. Barrington †, and, I believe, medical writers, have mentioned the use of linen as being a principal cause why the leprosy, which was once so common in this country, is now so rare.

I see no mention neither of a *bedstead*. Mr. Howard in general terms recommends bedsteads for health and cleanliness *. A bedstead, however cold the materials (suppose iron) will be warmer than the stone or brick floor, with only matting to cover it; for the surface of the iron in the bedstead being much less than that of the covered part of the floor, the natural warmth of the body, accumulated on the bedding, will be conducted away much less readily by the former than by the latter. At any rate, the elevation given by a bedstead will save the bedding from being trampled on and covered with dust and dirt. It will also give access for the air to ventilate the under part of it.

Bedsteads are actually allowed to felons in many gaols ‡.

I see no provision made here for *firing*: yet some provision of this sort seems absolutely necessary, at least, in extreme cold weather, for those

† Observations on the Statutes, Title *Consuetudines*
et *Assisa Forestæ*, p. 193. 3d edit.

* P. 71. 264.

‡ Howard, 96, 264, 292, 404, 407, 443, 454.

whose employments are chiefly of the sedentary kind, and for all of them at times, when no work is done, as on Sundays. For this purpose, it is by no means necessary, nor even advisable, that there should be a fire to every room, nor between every two rooms, nor indeed that there should be in any of the rooms any fire-places at all. The most economical way as yet in use, of generating and applying heat for this purpose, seems to be that which is practised in *hot-houses*, by means of flues or lateral chimnies, in which the smoke deposits its heat in its passage to the atmosphere. The fire employed in heating the bread-oven, might, perhaps, be occasionally made useful in this way. I have heard it suggested, that the steam of boiling water might perhaps be applied to the purpose of heating rooms, in a method that might be more economical than that of heating them by smoke. If this expedient were employed, the coppers in which the victuals were boiled, might perhaps be adapted to this purpose*.

The provision for excluding promiscuous visitants seems highly eligible. In a nation, however, so jealous of every thing that favours of secrecy in the exercise of coercive power, even over the most obnoxious of its members, it required no mean degree of intrepidity to propose it. I had, in truth, but little hope of seeing it pro-

* Mr. Howard found stoves, and a regular provision for firing, in several foreign prisons. See How. 109, 114, 137.

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P. 30.

posed, much less adopted and acquiesced in, as it already is in the instance of the Thames convicts. An acquiescence so complete and general as this has been found to be, argues a greater fund of solid sense, and less sensibility to inflammatory ideas, than perhaps, before the experiment was made, could reasonably have been hoped for. This, together with many other examples to the like effect, may serve to silence at least, if not to remove, any objections that may be entertained against a measure acknowledged to be beneficial in itself, on the score of its being obnoxious to popular sentiment, unwarranted by the dictates of utility.

The establishment of Visitors, who are frequently to be changed, and the admission of occasional visitants by order from any member of the Committees, are expedients that seem amply sufficient for obviating any real danger of abusive severity. It is surely a notion too wild to be seriously entertained, by any one who will give himself leisure to reflect, that the whole body of country magistrates, and the whole circle of their acquaintance, are likely to be tainted with the principles of aristocratic tyranny. Supposing this, against all probability, to be the case, and that any one habit of undue severity were established, any one false brother would be sufficient to betray the secrets of the confederacy, and expose it to the resentment of the public.

At the same time, it is highly expedient to give as little admittance as possible to persons of such ranks in life as are most obnoxious to the punishment

nishment inflicted in these houses. The circumstances of secrecy and seclusion give an air of mystery to the scene, which contributes greatly to enhance the terrors it is intended to impress. True it is, that the convicts, as they come to be discharged, and to mix again with society, will circulate, among persons of the same ranks in life, such accounts of what they have seen and felt, as it may be thought will be sufficient to correct any inaccuracies in the notions that may have been suggested by imagination; this however, I take it, will not be altogether the case. Experience and ocular observation might indeed, in time, dissipate the illusion, and bring down the apparent horrors of the scene to a level with the real suffering; but in the susceptible minds of the giddy multitude, it is not mere report alone that can obliterate the influence of first impressions.

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Section XLV. makes provision for communicating to these societies the benefits of religion.

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p. 31.
Provision
for religious
duties.

1. On all Sundays, as also on Christmas-day, and Good-Friday, there is to be morning and evening service, with a sermon after each: at which services all the convicts (unless disabled by illness) are to be present.

2. The two sexes are to be kept at a distance

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distance from, and, by means of partitions, out of sight of, one another.

3. Of the officers and servants, such as can be spared from their employments, are likewise (unless prevented by illness) to be present.

4. The chaplain is required to visit, at their request, and empowered to visit at his own discretion, any of the offenders, sick or in health, who may stand in need of his spiritual assistance: so that his visits interfere not with their stated labours.

OBSERVATIONS.

It were to be wished on this occasion, if it could be done without inconvenience, that such of the convicts as may happen to be of a religion different from the established, might have the benefit of spiritual consolation in their own way. It is no answer, to say with a sneer, that the inhabitants of these houses are in little likelihood of being incumbered with religious scruples; for a total indifference to religion is by no means a necessary accompaniment to an occasional deviation from the dictates of morality: on the contrary, it is no uncommon thing to observe in the same person, a great inattention to the essentials of morality, joined to an anxious attention to the inessentials and externals of religion. This point, however, could not be compassed without some difficulty. It would be endless to set up as many chapels as there

there may chance to be sects in this community. At any rate, it is not the belonging or professing to belong to any other sect, that should be allowed to excuse a man from attending the stated service; for, if this were the case, persons who cared nothing about religion, would be apt to profess themselves of some dissenting sect, that, instead of going to chapel, they might spend the time in idleness. The being obliged to give such attendance, would be no hardship to any, even in a religious view; for I do not believe there is at this time of day any sect which holds it sinful merely to be present at divine service performed according to the rites of the church of England *. I suppose there are few, indeed, but would even think it better to attend that service than none at all.

Jews and *Catholics* would be the worst off: *Jews*, with their continual domestic ceremonies, and *Catholics* with their numerous sacraments. *Catholics* † seem, at first sight, to be without hope of remedy: a door, however, though but a narrow one, is opened for their relief, by the general power vested in the members of the Committees to give orders of admission. As to *Jews*, I must

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* In the prisons at Paris however Protestants are excused from hearing mass. See Howard, 81.

† By Stat. 27 Eliz. c. 2. for a popish priest or other ecclesiastical person to be in any part of the realm is treason: and for any one wittingly and willingly to receive, relieve, or comfort him is a capital felony.

confess,

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P. 31.

confess, I can see no feasible way of making, in each labour-house, the provisions requisite for satisfying all their various scruples. As it happens, there seems reason (I do not know whether to say to hope, but at any rate) to believe, that of such of them as are likely to become inhabitants of these houses there are not many on whom these scruples would sit heavy. The only expedient I can think of for the indulgence of these people is, to have one labour-house for all the convicts of this persuasion throughout the kingdom. In such case, it would be but reasonable that the whole community of Jews should be at the expence of this establishment, including the charges of conveyance. They might then have their own *Rabbies*, and their own cooks and butchers.

The provision for the concealment of the sexes from each other, has been exemplified by the practice in the *Magdalen* and other chapels.

In some of the larger houses, considering the number of persons, either sick or in health, who might be disposed to receive the assistance of a minister, or to whom a zealous minister might be disposed to give it, especially if these additions were to be made to the service that are proposed under section 39, a single chaplain might hardly be sufficient to go through all the duty. In such case, the contributions that might be required of occasional visitors at chapel, who are likely to become numerous, might probably provide for another chaplain.

Section

Section 58, which relates to convicts working upon rivers, provides for the burial of such as die under confinement. I see no such provision relative to such as may die in the labour-houses. Would it not be proper to annex to each house a piece of ground to be consecrated for that purpose?

Sect.
XLV.
P. 31.

Section XLVI. makes provision for the article of health.

Sect.
XLVI.
P. 31.
—health.

1. There are to be two or more yards, in which the offenders are to be permitted to take the air by turns, as their health may require: in these yards, if proper employment can be found, they are also to be permitted to work, instead of working in the house.

2. Any offender appearing to be sick, is, upon report made by the surgeon or apothecary that his sickness is real, to be ordered by the governor to the infirmary, if his sickness be of a nature to require it, and entered in a book upon the sick list: and upon the surgeon or apothecary's report of his being recovered and fit to work, he is to be brought back to his lodging-room and put to work again, as far as is consistent with his health.

Sect.
XLVI.
P. 31.

OBSERVATIONS.

The number of yards is required, we see, to be two at least: the intention is manifest enough, though it is not mentioned: it is, that the two sexes may, in conformity to the plan of separation marked out in sections 38 and 41, have each a yard to themselves.

As to the purpose of airing, the best place of all is the top of the house. The air on the top of the house is likely to be purer than the air in any yards can be, surrounded as such yards must be by a high wall: 1st, such a situation would be higher than the damp or the noxious effluvia would ascend, were the air to remain unchanged: 2dly, besides this, the air, on account of the openness of the situation, would, in fact, be continually renewing *. For this purpose, it would be necessary the roof of the house should be flat, and covered with lead. The infirmary might be situated in the highest story; so that from thence to the leads would be but a few steps. It is doubtless for these or similar reasons, that a situation thus elevated is very generally chosen for the infirmary in foreign prisons †. In order that those whose health might require it, might enjoy the benefits of air and exercise in some degree, even in rainy weather, it would be of great use if the building, or a great part of it, were raised upon arcades. This Mr. Howard recommends strong-

* Howard, 82, 91.

† Ibid. 82, 91, 96.

ly for so much of it as is occupied by lodging-rooms, on the score of security.

Sect.
XLVI,
P. 31.

The expence, indeed, of building upon arches, and of leading, would be very considerable ; but the plan seems to be not to spare expence. The Conciergerie at Paris *, the Dol-huys at Amsterdam †, the Maison de force at Ghent ‡, are raised upon arcades || : in the Bastile at Paris, the roof is flat and leaded. I must confess, I see not why England should be less able to bear such an expence than France, Holland, or Austrian Flanders.

Section XLVII. regulates the appointment, powers, and salaries of the Visitors.

Sect.
XLVII.
P. 32.
Visitors
—their
appoint-
ment,
powers,
and emol-
uments.

1. Each Committee is to appoint two visitors, " Justices of the Peace, or other substantial householders," who are to be resident in the district.

2. Of these visitors, one is to be changed every year: no one is to continue for more than two successive years; but any one, after an interval of two years, may be again appointed.

3. The Visitors are to attend at least once in every fortnight.

* Howard, 82.

† Ibid. 128.

‡ Ibid. 140.

|| Ibid. 82.

Sect.
XLVII.
P. 32.

4. At each attendance they are to go through the following heads of duty :

1. To examine the state of the "house" [buildings].

2. To see every convict.

3. To inspect the accounts of the governor and store-keepers.

4. To hear any complaints concerning the behaviour of the officers and servants.

5. Or of the convicts.

6. And in general to examine into the conduct and management of the house.

5. For these purposes every visitor is empowered to examine any persons upon oath.

6. They are likewise empowered to apply punishments or rewards as under-mentioned.

7. They are from time to time to make their reports to the Judges *, as before, or to the Committee of the district.

8. They are to have a gratuity, if they think proper to demand it, for each attendance, to be settled by the Committee, and approved of by the Judges.

* See Sect. 11, 21, 24, 26, 30.

OBSERVATIONS.

The rotation established among these officers is grounded upon approved principles, that are exemplified in many other instances. If the same two Visitors were to be continued for life, the degree of discipline kept up in the house might come to depend more upon the notions and temper of those two persons, than upon settled rules. Having no emulation to animate them, they might grow torpid and indifferent: they might contract too close an intimacy with the governor and other officers, so as to be disposed to connive at their negligence or peculation: they might make what is called a *job* of their offices, looking upon the emoluments of it as an establishment for life. On the other hand, were both Visitors to go out at once, the fresh comers would for a time be new and awkward in their office; and the fund of experience collected at each period, would be dissipated by every fresh appointment. But upon this plan, that fund is continually accumulating, and is transmitted entire through every succession. At the same time, by admitting the re-election of a Visitor after a certain interval, room is left for accepting the services of such gentlemen as in point of inclination and ability may shew themselves most competent to the office.

Sect.
XLVII.
P. 32.

Section XLVIII. gives power to the Visitors to suspend any officer or servant, ex-

Sect.
XLVIII.
P. 33.
Power to

suspend
officers.

cept the Governor, in case of "corruption,
" or other gross misbehaviour."

Señ.
XLIX.

P. 33.
*Task-mas-
ters*, their
duty.

Section XLIX. appoints the duty of the
Task-master.

1. He is constantly to superintend the
works carried on by the convicts.

2. He is to "take an account of every
" neglect of work or other misbehaviour.

3. Also of any instance of extraordinary
diligence or good behaviour.

4. He is to make his reports from time
to time to the Governor, who is to cause
them to be entered in a book to be kept for
that purpose.

Señ. L.

P. 33.
Powers of
the Go-
vernor in
punishing
offences
commit-
ted in the
house.

Section L. defines the powers of the Go-
vernor in punishing offences committed in
the house. These are enumerated under the
following heads:

1. Disobedience of the "orders of-
" the house."

2. Idleness, negligence, or wilful mis-
management of work.

3. Assaults not attended with any
dangerous wound or bruise by one con-
vict upon another.

4. Indecent behaviour.

5. Profane cursing and swearing.

6. Ab-

6. Absence from chapel.

Se&L. L.

7. Irreverent behaviour at chapel.

P. 33.

2. For any of the above offences the governor may punish by close confinement in a "cell or dungeon," for any term not exceeding three days, and keeping the offender upon bread and water only.

3. Touching any of the above offences, the governor may examine "*any*" persons upon oath.

Section LI. impowers the Visitors and the Committee to punish certain other instances of bad behaviour in a severer manner.

Se&L. LI.

P. 34.
—of Visitors and
Committees.

1. To the Visitors power is given to punish, in any convict, the following additional offences:

1. Absolute refusal to perform his work.

2. Wilful abuse of the materials.

3. Attempts to escape.

4. Assaults on any person at large, who happens to be present.

5. Assaults on any officer or servant of the house.

2. They are empowered also to punish any assaults by one convict upon another, that

Sect. LI. may happen not to have been punished by
 P. 34. the Governor.

3. Also any of the offences which the Governor is authorized to punish in the case where, by reason of the enormity or repetition of the offence, the punishment which the Governor is empowered to inflict of his own authority, is thought by him not to be sufficient.

4. For any of the above offences the visitors may punish by either

1. Moderate whipping.

2. Confinement upon bread and water in a dungeon, for any time not exceeding ten days.

3. Or both the above punishments in conjunction.

5. Concerning the above offences they are empowered to examine upon oath, with an injunction that it be in the presence of the offender.

6. In the cases No. 2. and 3. *“ the governor may, and he is hereby required to, order such offender to the cells or dungeons,—and is immediately,” or at the next coming of the Visitors, to “ report such offence to such Visitors; who are hereby empowered and required to enquire and determine concerning the same.”*

7. In

Se&t. LI.
P. 34.

7. In case of any offence which the Visitors shall deem worthy of a greater punishment than they are authorized to inflict, they shall report the offence, with the nature and circumstances of it, and the name of the offender, to the next meeting of the Committee.

8. To the Committee power is given to punish offences thus reported to them, by either

1. Moderate whipping.
2. Confinement upon bread and water in a dungeon.
3. Turning down from a higher class to a lower.

4. All or any of the above punishments in conjunction.

9. *" In case of removal into a prior class, the offender shall, from the time of making such order of removal, go through such prior class, and also the subsequent class or classes, in the same manner, and for the same time as under his or her original commitment."*

Section LII. is the converse of the Section last preceding: it opens a door to pardon upon the ground of extraordinary good behaviour.

Se&t. LII.
P. 35.
—in re-
warding
and re-
porting
for mercy

Sect. LII.

P. 35.

1. If in any convict committed by Justices in Sessions, the Visitors “shall at any time” “observe, or be satisfactorily informed of,” “any extraordinary diligence or merit,” and make report accordingly, “the said Justices” [shall] “may, if they think proper, advance him into a higher class.”

2. When any convict has been promoted as above, the time of his confinement is to “be computed as if he or she had regularly “passed through the prior class or classes.”

3. With regard to any convicts committed by the Judges*, whether originally, or upon a pardon granted upon that condition, for a certain term, the Judges are, upon a like report, to have like power to alter and shorten his confinement.

4. Convicts, committed for life, may, upon being reported to the Judges as afore-said, be by them reported to his Majesty for mercy.

OBSERVATIONS.

This and the two last preceding sections bearing a close relation to one another, I shall consider them together. As to the last of the two

* At the Old Bailey, or on the Circuits.

paragraphs I have printed in Italics I must confess I am not altogether certain about the sense of it. My doubt is, whether a convict, upon his degradation into a lower class, is to be punished with respect to the severity of his treatment only, or, besides that, with respect to the duration of his confinement. I am inclined to imagine, both ways; but this construction seems not to be absolutely a necessary one.

Sect. LII.
P. 35.

A convict, suppose, has been committed for three years. He has served the first year of his time, and half his second. Of course, he has been half a year entered in the second class. He now commits an offence which the Committee think proper to punish with degradation: he is turned down into the first class. What now is to become of him? Is he to stay two years and a half longer, to wit, one half year more in the first class, and a year in each of the other classes, or only one year and a half, that is, half a year in each of the three classes? In the first case, it seems hardly proper to say, that he has gone through "such prior " class, and also the subsequent classes in the " same manner, and for the *same time*, as under " his original commitment;" for it seems that he has gone through such prior class, and also the subsequent classes (in the same manner, perhaps, but) for a *longer* time than he was to have had to go through them in under his original commitment. Had there, however, been no distinction in the treatment to be given to the respective classes, it must have been understood in this sense, as pro-

Sect. LII. longing the total time ; for the provision would
 P. 35. have had nothing but the circumstance of time to
 operate upon.

Another doubt I have respecting the clause in section 50, which limits the time for which a governor is impowered to keep a convict in a dungeon upon bread and water to *three* days. This passage I know not very well how to reconcile to a clause in section 51. In this latter section, in case of an offence which, in the opinion of the governor, deserves a greater punishment than what he is himself authorized to inflict, he is directed to report it to the Visitors, who, in such case, are authorized to order the offender to confinement in a dungeon, there to be kept on bread and water, if that be the mode of punishment they think proper to adopt, for ten days. Thus far, then, their power extends ; to the confining a man for ten days. To the governor, in the last preceding section, it was not thought proper to give so great a power : his power was to extend no farther than to the confining a man for three days ; yet in this same section, in the case above mentioned, where, by the supposition he cannot punish by confinement for more than *three* days, the Governor is impowered and “required” to order the convict to the dungeon, and “immediately, or the next time the Visitors shall “come,” report the offence to them, for them to punish it. Now, for what time the convict committed in this manner to a dungeon is to remain there, is not expressly said : as no time is
 mentioned

Sect. LII.
P. 35-

mentioned for his releasement, it seems impossible to put any other construction upon the clause than that he is to stay there till the coming of the Visitors. But the Visitors may not come for a fortnight *. So long then may a convict remain in one of these dungeons by the authority of a Governor. The consequence is, that indirectly a power is given to this officer, of inflicting a punishment more than three times as great as that which it is thought proper, in direct terms, to empower him to inflict; and (as far as concerns this species of punishment) greater than that which it has been thought proper, in any terms, to empower the Visitors to inflict. On this occasion, no mention, I observe, is made of dieting upon bread and water: the Governor is simply required to order the offender to one of the dungeons. Is he then, or is he not in this case, authorized to add that hardship to the confinement? Is the dieting in this manner, or is it not, to be regarded as an article included of course in the regimen of a dungeon? This power of punishing an offender previously to trial, is confined, I observe, to the Governor: it is not given to the Visitors.

The provision for disposing of the convicts into classes †, so as to be liable to be advanced or to be degraded ‡, seems an excellent expedient for strengthening the influence of the several authorities to which it is meant to subject them. It seems

* See Sect. 47.

† See Sect. 43.

‡ See Sect. 51.

extremely

Sect. LII. extremely well contrived for exciting emulation ;
 P. 35. for making a standing and palpable distinction
 betwixt good and ill behaviour, and for keeping
 their hopes and fears continually awake. If it
 should be thought proper to indulge the convicts
 with a share in the profit of the labour *, this
 would afford a farther means of adding to the
 distinction.

Here ends that part of the bill which concerns
 the establishment of labour-houses. What follows
 in the seven next sections is confined to the sys-
 tem of labour to be carried on upon rivers. The
 greater part of them are employed in re-enacting
 so many corresponding clauses of the present act †.
 Concerning these, it will not be necessary to be
 very particular.

Sect.
 LIII.
 p. 36.
 Superin-
 tendants,
 how to
 employ
 their con-
 victs.

Section LIII. establishes, in general terms,
 the authority of the Superintendants above
 spoken of ‡. It empowers them, upon the
 delivery of any *male* convict into their cus-
 tody, to keep him, for the term mentioned
 in his sentence, to hard labour. This hard la-
 bour is to be applied “ either to the raising
 “ of sand, soil, and gravel, or in any other

* See Observations on Sect. 23.

† The name given to the head person who is to have
 the charge of the convicts upon this establishment is
 changed from *Overseer* (the word used in the former
 act) to *Superintendent*.

‡ See Sect. 32, 33, 34, 36.

“ laborious service for the benefit of the
“ navigation of the *Thames*, or of such
“ other navigable rivers, or harbours, as
“ aforesaid * :” when on the *Thames*, “ then
“ at such places only, and subject to such
“ limitations, as the Trinity-House shall,
“ from time to time, prescribe.”

Sect.
LIII.
p. 36.

OBSERVATIONS.

This, as to the greater part of it, is an exact transcript of the latter part of section 5. of the present act †.

Section LIV. prohibits Superintendants from employing their convicts in delivering ballast to ships : it restricts the application of the labour to the above-mentioned object of benefiting the navigation of the rivers or harbours in question : except that it permits the employing them in making or repairing embankments or sea-walls.

Sect.
LIV.
p. 36.
—not in
deliver-
ing ballast
to vessels.

OBSERVATIONS.

This section is an exact transcript of section 6. of the present act, with the addition only of the

* See Sect. 32.

† By *the present act* I mean all along the Stat. 16 Geo. 3d. ch. 43. being that which is in force at the time I write.

Sect.
LIV.
P. 36.

above exception. As this new kind of employment was meant to be permitted, the insertion of the above exception for that purpose, was no more than prudent, at least, if not absolutely necessary : for the main design in making of embankments or sea-walls, is to save the land from being carried away or overflowed ; and it may be of little or no service to the navigation. Mr. Campbell, Superintendant of the Thames convicts, pursuing the spirit of his instructions rather than the letter, has already ventured to employ his convicts in some useful works on shore ; perhaps it might not be amiss to add a retrospective clause for his indemnity.

As to the prohibition above mentioned, no reason for it is given. I imagine the reason to have been the preventing that intercommunication which in such a case, would have been necessary between the convicts and the ships-crews. It can have nothing to do with any privileges of the Trinity-house ; not being confined to the Thames, but extended to all rivers and harbours where convicts shall be employed.

Sect. LV.

P. 37.
—how to
diet and
cloath
them.

Section LV. provides for the diet and apparel of convicts, under the care of superintendants, as Section XL. did for those who are to be confined in the Labour-houses. In point of diet it directs that they be fed with bread, and any coarse or inferior food, and water or small beer, as in Section XL. only
the

the word "*meat*" is dropped here after the word *coarse* (whether by accident or design is more than I can determine). The apparel it leaves altogether to the "discretion of the "superintendants:" it likewise prohibits the supplying the convicts with any other food, drink, or cloathing, under a penalty of not more than ten pounds, nor less than forty shillings.

Sect. LV.
P. 37.

OBSERVATIONS.

This section is the same as section 7. of the present act; except with regard to the penalty which, by the present act, is not to be more than forty shillings.

Section LVI. invests superintendants with the power of correction. A convict refusing to perform his work, or "*guilty of any other misbehaviour or disorderly conduct,*" may be punished by the superintendant, by "such whipping, or other moderate punishment, as may be inflicted by law on persons committed to a house of correction for hard labour."

Sect.
LVI.
P. 37.
—and
correct
them.

OBSERVATIONS.

This section is the same in every respect as section 8. of the present act.

Section

Sect.
LVII.
p. 37.
How they
may be
pardon-
ed, and
how e-
quipped
on their
dis-
charge.

Section LVII. provides a supply for convicts of this description, upon their discharge, to the same amount as Section LII. did for the convicts in the Labour-houses. It likewise provides for the discharge of any convict, previous to the expiration of his term, upon a letter written, upon a recommendation from the Judges as in Sect. LX. by a Secretary of State. The sum of money, and the cloathing, it refers, in this case, to the determination of the above Judges.*

OBSERVATIONS.

This section is the same, in every respect, as section 9. of the present act.

Sect.
LVIII.
p. 38.
Expences
of chap-
lains, sur-
geons, and
coroners,
and other
charges,
how to be
defrayed.

Section LVIII. makes provision in the lump for the assistance, medical and religious, to be given to the convicts in question, as likewise for the burial of such as may chance to die, as also for these and all other expences attending the keeping of the convicts under the care of such Superintendants. These expences it directs to be annually laid before the House of Commons, and undertakes, that, after deducting the net profits (if any) of the labour, they shall

* See Sect. 11, 21, 24, 26, 30, 47, 52.

be provided for in the next supplies granted by Parliament. The chaplains, surgeons, and apothecaries to be provided, are to be such as “ the Superintendant shall find it “ expedient, or shall be required” (it does not say by whom) “ from time to time to “ employ.” The convicts are to be “ *buried* “ in the most commodious parts of the “ shores, in or near which they have been “ employed,” and “ according to the form “ prescribed by the Liturgy of the Church “ of England. The necessary charges of “ such funerals, and also of the coroners, “ who shall sit on the bodies of such con- “ victs, are to be defrayed in the manner above-mentioned.

Sect.
LVIII.
p. 38.

Section LIX. provides, that such chaplains shall read morning and evening *prayer*, and preach a *sermon* after each, every Sunday, as also on Christmas-day and Good Friday.

Sect.
LIX.
p. 38.
Provision
for *divine*
service.

OBSERVATIONS.

These two sections are so many additions to the present act. In this the whole business was referred so entirely to the discretion of the Superintendant, that no express provision was made for either the spiritual or medical assistance, or the burial of the convicts. Neither was any provision made for the

Sect.
LIX.
P. 38.

the coroner's fees ; whereby that expence (which was not altogether a trifling one) falls solely as yet upon the counties bordering that part of the Thames they are employed upon ; that is, upon the counties of *Kent* and *Essex*, one or both of them. These omissions are supplied in the bill before, as it was highly requisite they should be.

In the mean time, they have been voluntarily supplied by the attention of Mr. Campbell, the present Superintendent. A surgeon of a battalion attends the convicts once a day ; and the surgeon general of the artillery visits them once a week. A clergyman sent by the countess of Huntingdon, gives them the assistances belonging to his profession, without any gratuity from Mr. Campbell, or any expence to the establishment. Not content with performing the ordinary duty in the manner provided for in the bill, he is assiduous in giving them the benefit of his instructions by every means, and at every opportunity in his power. He has distributed Bibles among them ; and has endeavoured to direct their attention to the sacred writings, by giving them rewards for performing little exercises proposed to them as tests of their proficiency.

The loose and general way in which these and other exigencies are provided for, with respect to convicts of the description now before us, especially when compared with the strict and minute attention paid to the regimen of the labour-houses, are strong testimonies of the extraordinary confidence reposed in the present Superintendent. I
have

have never heard of any fact so much as surmised, that afforded the least reason for deeming that confidence misplaced; and I have much reason for entertaining a contrary opinion; yet I should be sorry to see the merit of this individual officer made an argument for entailing powers so unlimited upon what person soever may chance at any time hereafter to bear his office. The establishment upon the Thames has been acknowledged to be intended but as a measure of experiment; it is to be hoped therefore, that when the effect of the regimen prescribed for the hard-labour houses has been approved by experience, it will be extended to the establishments upon rivers. *Jealousy, not confidence, is the characteristic of wise laws.*

Sect.
LIX.
P. 38.

Section LX. enjoins the Governors and Superintendants to make returns of the state of the convicts under their care. These returns are to contain the following particulars:

Sect. LX.
P. 38.
Returns to be made of the state of the establishment.

1. The name of each convict committed to their custody.
2. His offence.
3. His sentence.
4. His state of body.
5. His behaviour while in custody.

They are also to exhibit the names of all such convicts, as, since the last return, have passed out of their custody, whether

1. By death.

H . .

2. By

Sect. LX.

P. 38.

2. By escape.

3. By releasement, whether by order of a Secretary of State or otherwise.

For the purpose of making these returns regular *books* are to be kept by the persons who are respectively to make them.

They are to be made by the superintendent of the Thames convicts to the King's-bench, the first day of every term: by the governors of Labour-houses, and the superintendants of any other work, to the Judges, as before*, at each Assize; to the Justices of the Peace for every county and division within the district, at the two Sessions holden next after Easter and Michaelmas.

They are to be made upon oath, to be administered to them by the respective courts.

OBSERVATIONS.

The ordering these returns is a measure of excellent use in furnishing *data* for the legislator to go to work upon. They will form all together a kind of *political barometer*, by which the effect of every legislative operation relative to this subject, may be indicated and made palpable. It is not till lately that legislators have thought of providing themselves

* See Sect. 11, 21, 24, 26, 30, 47, 52.

with these necessary documents. They may be compared to the bills of mortality published annually in London; indicating the moral health of the community, (but a little more accurately, it is to be hoped) as these latter do the physical.

Sect. LX.
P. 38.

It would tend still farther to forward the good purposes of this measure, if the returns, as soon as filed, were to be made public by being printed in the gazette, and in the local news-papers. They might also be collected once a year, and published all together in a book *.

Section LXI. provides a penalty for escapes. This penalty, if the convict had been ordered to hard labour in lieu of capital punishment, is death: if in lieu of transportation, in the first instance, an addition of three years to his term of servitude; in the second instance, death.

Sect.
LXI.
P. 39.
Penalties
for e-
scapes—
on the
party.

* A few years ago, I began sketching out a plan for a collection of documents of this kind, to be published by authority under the name of *bills of delinquency*, with analogy to the *bills of mortality* above spoken of: but the despair of seeing any thing of that sort carried into execution soon occasioned me to abandon it. My idea was to extend it to all persons convicted on criminal prosecutions. Indeed, if the result of all law proceedings in general were digested into tables it might furnish useful matter for a variety of political speculations.

Se&t.

LXI.

P. 39.

OBSERVATIONS.

I cannot help entertaining some doubts of the expediency of capital punishment in case of escapes. *Punishments that a man has occasion to choose out of, should be commensurable.* That which is meant to appear the greater should either be altogether of the same kind, or include one that is of the same kind with the lesser; otherwise, the danger always is, considering the variety of men's circumstances and tempers, lest the punishment which appears the greater to the legislator and the judge, as being in general the greater, should appear the lesser to the delinquent. On the other hand, you may be sure of making your punishment appear the greater to the delinquent, when keeping to the same species, you can either encrease it in degree, or add a punishment of another species. A fine may to one man be worse than imprisonment; imprisonment may to another man be worse than a fine: but a fine of twenty pounds must to every man be worse than a fine of ten pounds; imprisonment for six months than imprisonment for three: so also must imprisonment, though it were but for a day, added to a fine of ten pounds, than a fine of ten pounds by itself.

In the present instance, it may very well happen, that a convict may even prefer certain death to his situation in a labour-house or on board a lighter: in such case, the punishment of death, it is plain, can have no hold on him. What is still more likely to happen is, that although he
would

would not prefer *certain* death to such a situation, he would yet prefer such a *chance* of death as he appears likely to be liable to, after having effected his escape. I say, after *having* effected it : for the *attempt*, I observe, is not made punishable in this manner.

Sect.
XLI.
P. 39.

It may be objected in the first case, that if death were preferable in his eyes to servitude, he would inflict it on himself. But the inference is not just. He may be restrained by the dread of future punishment ; or by that timidity which, though it might suffer him to put himself in the way of dying at a somewhat distant and uncertain period by the hand of another, would not suffer him, when the time came, to employ his own. In either of these cases, capital punishment, so far from acting as a preventative, may operate as an inducement.

In cases of escape, little, it should seem, is to be done in the way of restraint, by means that apply only to the mind ; physical obstacles are the only ones to be depended on. To the catalogue of these, large additions and improvements have been made, and still more, as I have ventured to suggest, might be made, if necessary, by the present bill. The degree of security which these promise to afford, seems to be quite sufficient without having recourse to capital punishment. This will save the unpopularity of inflicting a punishment so harsh, for an offence so natural.

In preference to capital punishment, I would

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rather

Sect.
XLI.
p. 39.

rather be for applying hard labour for life. Such a punishment is already admitted of by this bill *.

Sect.
LXII.
p. 40.
—on his
assistants.

Section LXII. inflicts penalties on such persons as may be instrumental to escapes.

1. Any persons rescuing such a convict, either from the place of his confinement, or from the custody of any who are conveying him to it, or assisting in such rescue, are to suffer as for rescuing a felon, after judgment, from a gaoler.

2. Any persons, who by supplying arms, or instruments of disguise, or otherwise assist a convict in escaping, or attempting to escape, are to suffer as for felony.

3. Persons who, having the custody of such a convict, or being employed by one that has, permit him to escape, if *voluntarily*, are also to suffer as for felony.

4. If *negligently*, are to be deemed guilty of a misdemeanor, and are to be liable to a fine not exceeding ten pounds, or to imprisonment for not more than six months, or to both.

OBSERVATIONS.

The punishment here appointed for negligently permitting an escape, is, I fear, liable to be too

* See Sect. 52.

Sect.
LXII.
P. 40.

small; especially considering, that a wilful permission of this sort, may frequently, for want of direct proof, be no otherwise punishable than as an act of negligence. If a convict of this stamp be a man of substance, as may sometimes happen, he may be very well able to give an under-keeper such a reward for his connivance as may very well indemnify him against the chance of losing ten pounds, and suffering even a six months imprisonment. What is remarkable, this punishment is no greater than that which, in another part of this bill *, is appointed for the trivial offence of supplying a convict with prohibited meat or drink. Instead, therefore, of saying that it should not be *more* than the *quantum* specified, I would rather say, that it should not be *less*. At any rate, it should contain some imprisonment; for, against imprisonment a man cannot be so completely indemnified as against fine.

I see no punishment for the *attempt* to rescue, or the assisting in such attempt: yet the attempt to rescue is an offence as much more atrocious than the assisting in a quiet attempt to escape, as robbery is than simple theft.

What is the use of describing the punishment of a rescuer in a round-about way by reference? why not make it felony at once? The standing punishment for the rescuing of a felon (meaning a simple felon) is no more than simple felony. It ought, however, to be greater, or else the as-

• Sect. 41, 55.

Sect.
LXII.
P. 40.

sisting in a quiet attempt to escape, ought to be less: *otherwise the offender has nothing to determine his choice in favour of an offence less mischievous, in preference to an offence more mischievous.*

I take for granted it could never have been the intention that, under this clause, the rescuer of a capital felon pardoned on condition, should suffer capitally.

Sect.
LXIII.
p. 40.
*Prosecu-
tions for
escapes
facilitat-
ed.*

Section LXIII. is calculated to facilitate the prosecution of persons concerned in escapes.

1. Convicts escaping may be *tried* in the county in which they are retaken.

2. In a prosecution for an escape or rescue, or attempt to escape or rescue, either against the convict himself, or any person assisting him, the certificate above-mentioned (after proof made that the culprit is the same that was delivered with such certificate) is to be deemed conclusive evidence of his being the person who was ordered to the confinement therein mentioned.

OBSERVATIONS.

To shew the beneficial effects of these provisions, in saving useless trouble, the way would be to state and explain the several rules of law which they dispense with; but this is a piece of information that would not be very interesting to readers at large, and lawyers have no need of it.

Section

Section LXIV. appoints the mode of procedure for the recovery of the pecuniary penalties inflicted by this Bill, when no particular method is prescribed*. It is to be summary, before two Justices of the Peace: the imprisonment, in case of failure, is to be for not less than one month, nor more than six. The other provisions are what are usually inserted in cases of summary procedure.

Sect.
LXIV.
p. 41.
Penalties
to be pro-
ceeded for
summarily.

Section LXV. is another provision of procedure dispensing, for the purposes of this Act, with the general rule of law, that Judges must be *in* the jurisdiction *for* which they are doing business. It sometimes happens that the Court-house for a town that is a county of itself, is the Court-house for the county at large, but the Judges lodgings are not situate in both. It therefore declares, that for the above purposes, they shall be "construed and taken to be situate" *in both.*

Sect.
LXV.
p. 41.
Judges
may do
business
out of
their ju-
risdic-
tion.

OBSERVATIONS.

Here the hand of the lawyer is visible; a plain man would have contented himself with

* See Sect. 40, 55. See also Sect. 18, 41, 62, where other modes of procedure seem to be intended.

saying,

Sect.
LXV.
P. 41.

saying, that a judge of the description in question might do such business as might be done at his lodgings, for any county, although he were in an adjacent one. But there never was yet a lawyer, who, when either would equally well serve the turn, did not prefer a false account to the true one. The old maxim which, to another man would seem inflexible, "nothing can be in two places at once," bows down before him. These paradoxes are a kind of professional wit; which is altogether innocent in the intention, though not altogether harmless in its effects. This is no reflection on the author: it is only attributing to him, in common with every body, what no body is ashamed of.

Sect.
LXVI.
p. 41.
Clauses of
indemnity.

Section LXVI. allows persons prosecuted for any thing done in pursuance of this Bill, to plead the *General Issue*; if the suit terminates in their favour, gives them treble costs: if against them, and by verdict, exempts them from costs, unless the Judge certify his approbation of the verdict.

Sect.
LXVII.
p. 42.
Limita-
tion of
actions.

Section LXVII. limits the place and time of such a prosecution. The jurisdiction is to be that wherein the act was done: the time within six months of it.

Sect.
LXVIII.
p. 42.
Present
act re-
pealed.

Section LXVIII. and last, repeals the present Act, except with regard to such offenders whose terms are unexpired.

O B-

OBSERVATIONS.

Se&. LXVIII.
p. 42.

Perhaps the simpler and more commodious way would be to take a section by itself for giving the requisite continuance to the above terms, and doing what else is necessary (for I suspect that more may be necessary) to prevent the unintended consequences of such a repeal; and then in another section, to repeal the act simply and absolutely.

Some hundred years hence, when conciseness shall be deemed preferable to prolixity, and the parliamentary stile shall have been divested of all those peculiarities which distinguish it, to its disadvantage, from that of common conversation, the formulary for that purpose may be as follows :

The act 16 George III. c. 43. stands repealed.

The act 16 George III. may be repealed : but the memory of the proposer of it will SURVIVE.

SUPPLE-

SUPPLEMENTAL HINTS AND OBSERVATIONS.

THE following observations, though they connect with the subject of section 1. could not well have been introduced previously to sections 30, 43, and 52.

Further
advanta-
ges of
hard-la-
bour over
transporta-
tion :
1st, in
point of
divisibili-
ty.

Besides those stated under section 1. a farther advantage, which the punishment proposed to be established in the Labour-houses has over Transportation, is that of superior *divisibility*; by which means the quantity of it is capable of being proportioned with greater nicety to the different degrees of malignity in different offences. The punishment of Hard-labour is divisible in point of *intensity* as well as of *duration*; and a division of it in the former of these ways, is actually directed to be made in section 43. That of Transportation is divisible no otherwise than in point of duration. In this point it is, in its own nature, indeed, incapable of being divided to as great a degree of nicety as Hard-labour is. Very little advantage, however, of this property of it has been made in practice. I am not certain whether there may not have been a few instances in which convicts have been transported for as short a time as three years; but in general, the only terms in use have

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been

been for seven years, for fourteen years, and for life. In the duration of the confinement in the Hard-labour houses, as many different periods are allowed on one occasion or another, as may be marked out between one year and seven years. I cannot see, however, why even a greater latitude than this should not be admitted of, especially on the side of diminution; in other words, why a shorter time than a year should in no case be allowed. One should think, that for many of the offences that are punishable by transportation, a less term than one year, and for petty larceny, a less term than two years (the terms respectively allowed of) might suffice. But on this head I shall insist no farther, as it would lead me from the particular object of the proposed Bill, to discussions that belong to a general survey of criminal jurisprudence.

Another point in which the punishment proposed by the Bill, has the advantage of Transportation, is that of being in the way of being *remitted* at any time on the ground of merits displayed subsequently to the offence. Provision, we may remember, is made for that purpose in section 52. But a convict who is transported, though he be not out of the *reach* of pardon, is out of all *hope* of pardon on that ground, since he lies out of the reach of all observation which could dictate the expediency of such indulgence.

—zdly,
Of remi-
ssibility.

The following hints connect, in some measure, with the subject of section 13. and with a principle adopted in section 40.

Motto
and de-
vice for
labour-
houses.

A suitable

A View of the Hard-Labour Bill.

A suitable *motto* over the doors of these houses might have many good effects. It might contribute to inculcate the justice, to augment the terror, and to spread the notoriety of this plan of punishment.

The following sentence might, perhaps, answer the purpose :

Had they been industrious when free, they need not have drudged here like slaves.

Or this,

*Violence and knavery
Are the roads to slavery.*

The latter is that which I should prefer on many accounts. It is more expressive ; indicating more particularly the kind of misbehaviour that was the cause of their punishment ; and the proverbial turn of it, together with the jingle, will render it more apt to be circulated and remembered by the people. *Violence* respects those who may be committed upon a pardon for robbery, or those who may have been committed in any way for malicious mischief ; *knavery*, the common run of thieves and sharpers. *Fraudulent* and *forcible*, is a division that runs in a manner through the whole catalogue of offences against the police.

The efficacy of this motto might be still farther assisted by a *device*. Over the door there might likewise be a bas-relief, or a painting, exhibiting a wolf and a fox yoked together to
a heavy

a heavy cart, and a driver whipping them. The wolf as an emblem of violence and mischief; the fox of knavery. In the back ground might be a troop of wolves ravaging a flock of sheep, and a fox watching a hen-roost.

Bas-reliefs, if made in artificial stone, might be cast, a number of them in the same mold, and be the same for all the Labour-houses.

Should it be thought an improvement, a monkey, as being more peculiarly the emblem of wanton mischief, might be added to the above train. Among the offences which it is proposed should be punishable in this manner, are many that come under the denomination of malicious mischief. In this case, the inscription, instead of "*Violence and knavery*," had need to be, "*mischief, rapine, knavery*." The danger is, lest the addition of an animal, whose manners are calculated more constantly to excite merriment by their drollery, than displeasure by their mischievousness, should give such a cast of ridicule to the whole contrivance, as should counteract the design of it.

The device adopted in the house of correction at Mentz, and other foreign prisons, according to the account given of it by Mr. Howard *, does not seem so well imagined as it might be. It consists of a waggon drawn by two stags, two lions, and two wild boars; and the purport of the inscription is, that "if wild beasts can be tamed

* P. 108.

“to the yoke, we should not despair of reclaiming irregular men.” The equipage here represented, has nothing in it that is very characteristic of the persons whose conditions it is meant to allegorize; and there seems to be something awkward in making the hopes of succeeding, with regard to men, rest, as it were, upon no better footing than the success of the contrivance there imagined respecting brutes. I have read of hogs being now and then employed in some parts of France to help draw a plough. We have read of gods and goddesses, and now and then, perhaps, a Roman general in his triumph, who have been drawn by lions; but I never heard yet of a stag’s being yoked to a waggon, either as a truth or in the way of fable; much less appearance is there of its being acknowledged for a known truth that waggons may be made to draw with a team composed of stags, and boars, and lions.

Let me not be accused of trifling: those who know mankind, know to what a degree the imagination of the multitude is liable to be influenced by circumstances as trivial as these.

Site of
the la-
bour-
houses.

With regard to the site of the building*, might it not be a proper direction to give, that care should be taken to have such a quantity of ground all around the building included in the purchase, as might prevent any houses from being

* See Sect. 11.

built within such a number of yards distance ? An establishment of this sort might, in some way or other, afford inducements to people of the lower classes to settle near it. But the near vicinity of any house might be productive of several bad effects : it might facilitate escapes ; it would take away from the sequestered appearance of the scene ; it would put the convicts and their neighbours into the way of engaging in conversations which might be of prejudice to both.

With regard to such convicts as it may be thought expedient to put to works of the sedentary kind, it might be of use, on the score of oeconomy, if such of them as have a trade of their own that can be carried on in the house should be permitted to work at that trade in preference to another. Hatters, stocking-weavers, taylor, shoemakers, and many other handicrafts, might carry on their trades in such a situation, nearly as well as any where else ; so it were in the wholesale way, and not for particular employers. The trades that will be set up in the house for the instruction of the convicts will hardly be of the most lucrative kind ; and if they were, it can hardly be expected that a man should earn as much at a trade that is new to him, as at one he has been bred up to. The difference would be so much loss to the public during the time a convict continues in the Labour-house. But it might, besides that, be a loss to him, and through him to the public, for the remainder of his life : if his confinement has been long, he may have lost, by the

time it is over, a great part of his skill. In the compass of a few years, a course of Hard-labour may have irrecoverably deprived a man of that pliancy of muscle and nicety of touch, that is necessary in some trades.

The convicts who come within the view of this institution, may be distinguished into two classes: the one consisting of malefactors by profession, who possess no honest talent; the other of persons of different trades and employments, who have subjected themselves to the censure of the laws by an occasional deviation from integrity. The first cannot but be benefited by the institution in point of talent, as well as in other respects; the others, howsoever benefited in other respects, may, in many cases, be sufferers in point of talent, if their industry be forced out of its old channels.

F I N I S.





